United States Court of Appeals

for the Second Circuit

APPENDIX

75-1154

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P/S

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

HOWARD FINKELSTEIN, a/k/a ROBERT HOWARD, ANTHONY SCARDINO, ALAN SEGAL and EDWARD ZUBER,

Appellants.

On Appeal from the United States District Court for the Southern District of New York

JOINT APPENDIX

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Q In what way?

A He prepared the whole thing.

Q Well, did he certify it?

A No, he did not certify it.

Q You mean he just set it up on figures that you gave him?

MR. DOYLE: Objection to the leading question on object.

THE COURT: Sustained.

A He prepared the financial statement from information that was available to me.

MR. DOYLE: Can't hear the witness.

THE WITNESS: He prepared it from information we furnished him.

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Q Now, sir, with regard, sir, to the agreement of Mr. Segal to furnish a half million dollars to Pioneer in order to get the mine in operation, in production, was that half million dollars ever produced?

A No, it was not.

Q And was the moneys in respect of the sale of the 250,000 shares of Bridgehan, Marion and Morgan stock ever produced?

A No, they were not.

Q Sir, during the period of time you were associ-

ated with Pioneer Development Corporation did Pioneer Development Corporation produce any revenues, to your knowledge?

A No, they did not.

Q Did Pioneer Development Corporation have any earnings, to your knowledge?

A They did not.

Q Did Pioneer Development Corporation go into commercial production on any items during your association with the company?

A They did not.

MR. WALKER: Your Honor, I have no further questions of this witness.

THE COURT: We will take our afternoon recess at this time.

(Recess.)

MR. DOYLE: Your Honor, may we have the Court's permission to change the order of cross-examination by defense counsel?

THE COURT: All right.

CROSS EXAMINATION

BY MR. GREENBERG:

Q Good afternoon, Mr. Clegg. My name is Stanley Greenberg and I represent Mr. Zubek.

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What approximate dates were you ~~present~~ President at the Pioneer Development Corporation?

A Approximately from October 23rd until it was sold in March.

Q Of 1970?

A Correct.

Q And how soon before October of 1969 did you become involved with the company, so to speak, in the acquisition of it and so forth?

A Not really until that date.

Q From approximately October of '69 to March of '70 you served as the president. During that entire period of time, sir, what was your understanding as to Mr. Zuber's connection, if any, to Pioneer Development Corporation?

A There was no connection.

Q I beg pardon?

A There was no connection.

Q Is that still your present understanding?

A Yes.

Q Is it a fair statement that the events about --

THE COURT: When you say "connection," what do you mean?

THE WITNESS: Well, he was not involved in any

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of the affairs of the company or the acquisitions or the management of the company.

THE COURT: Okay.

MR. GREENBERG: Thank you, sir.

Q Is it a fair statement, Mr. Clegg, that your memory today of the events about which you have testified is very poor?

A Five years is a long time but certain things I reviewed records to refresh my memory

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Q Who showed you those records?

A Mr. Walker.

Q Have you spent a substantial amount of time -- have you spent time with Mr. Walker in preparing for this testimony here today?

A Yes.

Q How many different days have you been with Mr. Walker?

A In the last year I believe four occasions.

Q Within the last two weeks, shall we say?

A One occasion.

Q In connection with your guilty plea in this case, the Government agreed to do certain things, is that correct?

A Would you repeat the question?

Q The Government agreed to do certain things.

A In connection with what?

Q Your guilty plea in this case to Counts 1 and 2 of the indictment.

A Oh, correct, yes.

Q And they agreed to dismiss the 44 counts or at least to move to dismiss them, is that correct?

A They are not dismissed. I don't think.

Q The Government has agreed, haven't they, at the time of your sentencing to make a motion, to ask the Court to dismiss the remaining 44 counts of your indictment?

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A That's correct.

Q And the Government has also agreed, has it not, to bring to the attention of the sentencing Court the fact of your cooperation in the prosecution of this case?

A That's correct.

Q Now, is it your understanding, sir, that the determination of the degree of cooperation that you have given is to be made by Mr. Walker?

A I would presume so.

Q And is it your understanding that it is Mr. Walker who will make that representation to the Court as to the degree of your cooperation?

A I presume so.

Q With regards to that particular portion of your agreement with the Government, have you had any conversations about that subject with Mr. Walker within the last week?

When was the day that you referred to, sir, within the last two weeks that you had spent with Mr. Walker preparing for your testimony?

A Sunday.

Q Sunday?

A Yes, Sunday.

Q On Sunday did you have a conversation with Mr. Walker regarding that portion of your agreement with the Government to which I referred a moment ago?

A Yes, only in so much that my testimony would be truthful which, you know -- and if I can't recall, I won't recall. It's just along those lines.

Q Do you understand at all from the conversations with Mr. Walker that truthful in this sense means faithful to the Government's view of the evidence?

A You know, this is like a judgmental thing. In my mind, I am just going to tell the truth.

Q As best you can recall it?

A As best I can recall and I don't really care what the consequences are

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Q In your conversation with Mr. Walker on Sunday, did you ever have any difficulty remembering things about which you have testified today?

Isn't it a fact that you -- I'm sorry, sir.

A There was a lot of areas that I'm nebulous on.

Q Isn't it correct that your memory is vague on many things and you simply don't remember?

A That's correct.

Q And isn't it true that you told Mr. Walker that on Sunday?

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A Well, Mr. Walker was giving me documents to refresh numbers and dates and things like that.

Q And isn't it true that Mr. Walker reminded you frequently to look at the documents, to get your testimony down, and didn't he remind you, sir, that if you did not do so, he would tell the Court at the time of your sentencing that you had not cooperated with the Government and thereby seek a harsh sentence for you?

A I don't think it was put like that, no. It was impressed on me to recall to the best of my ability dates, facts and to, you know, pay attention, not to take it lightly.

Q Now, do you remember calling my office and speaking to me on November 21st, 1977 of this year, sir?

A I remember returning a call from someone I didn't know.

Q Yes, you returned my call.

A Yes.

Q You recognize my voice at all?

A Not really.

Q Do you deny that it was I that you spoke to on that day?

MR. WALKER: Objection.

THE COURT: I don't know how he would know in the absence of some prior foundation for knowing your voice.

Did the man introduce himself as Mr. Greenberg?

MR. GREENBERG: Thank you, sir.

Q Did you speak to a man who identified himself as Mr. Greenberg on that day?

A I spoke -- I don't think that's the name I recall.

Q You spoke to two of us, did you not, Mr. Greenberg and Mr. Kirschner?

A Kirschner that's the call I returned.

Q Do you recall that we had a conference?

A Right? Somebody else came in on that conversation.

Q Didn't you tell me at that conversation, sir,

that your memory as to these events was extremely poor and that you had only vague recollections?

A Yes.

THE COURT: Before that, had you had any opportunity to review any of this material to refresh your recollection?

THE WITNESS: During the last year I had, your Honor.

Q Now, with regard to your meeting with Mr. Zuber between Christmas and New Year's of 1969, you mentioned the figure $200,000. Are you absolutely positive that it was Mr. Zuber who said that?

A After five years I can't be absolutely positive of anything that specific. You just have general recollections of what happened.

Q Isn't it possible, sir, that the figure $200,000 on that date came from your conversation with Mr. Segal: it was Mr. Segal who mentioned it?

A It could be.

Q You are not certain one way or the other?

A That morning I was very shook up, you know.

Q All right.

Now, after Mr. Zuber left your house, within a week or so you visited his home, did you not, sir?

A I don't know if it was -- it was some time --

Q Shortly thereafter.

A I'll say within three weeks, we'll say.

Q Some time within the next three weeks you visited Mr. Zuber's home?

A Correct.

Q You became friendly with him?

A Yes.

Q You met his wife?

A Yes, I did.

Q And you met his children?

A Yes, I did.

Q In fact, you brought two mini bikes over for his children, did you not?

A Yes, I did.

Q And you borrowed Mr. Zuber's colored television one one occasion, didn't you, sir?

A I think I did, yes.

Q And, in fact, you loaned him your automobile on one occasion, did you not?

A I don't remember that.

Q Now, you testified before the Securities Exchange Commission in Los Angeles on June 23, 1960, is that correct, sir?

A I believe so.

Q In fact, where were you living at that time?

A At the mine in Nevada.

Q You were still trying to develop the mine while you were testifying in this matter before the SEC, is that right?

A That's correct.

Q And when you testified before the Securities and Exchange Commission on June 23, did you give a complete and truthful testimony regarding your dealings with Pioneer Development Company?

A Truthful anyway.

Q I beg your pardon?

A Truthful, anyway. I don't know how much detail.

Q You did not mention Mr. Zuber at any time during that testimony, did you, sir?

A I don't remember the transcript.

Q Would you like an opportunity to review it, sir?

A Yes. You mean to answer that question? I would have to.

MR. WALKER: Your Honor, if Mr. Greenberg is trying to make a point, I think maybe we can make the point a little more easily than have him read every word of this transcript.

THE COURT: Would you make a concession?

MR. WALKER: Yes. I would concede he wasn't asked --

MR. GREENBERG: Oh, no.

MR. WALKER: -- nor did he volunteer.

THE COURT: That's good enough.

Proceed. Next.

Q Mr. Clegg, please direct your attention to the underlined material, pages 23 and 24. Read it to yourself, sir.

THE COURT: Do you have a copy of that exhibit?

MR. WALKER: Yes, your Honor.

(Handed to Court.)

Q Now, in that testimony, sir, you were asked about the situation and you testified about the situation with the McKibbon stock, is that correct?

A That's correct.

Q And you didn't mention Mr. Zuber's name anywhere, did you, sir?

A I did not.

Q In fact, you said before the SEC, in June of 1970, that you really didn't know the details and you were quite vague on it?

MR. WALKER: Objection unless he reads the whole

question and answer, your Honor.

THE COURT: Sustained. Strike it out. Disregard it.

Q Now, you testified also before the grand jury in this building on November 21st, 1973, is that correct?

A That's correct.

Q And did you give a truthful and complete testimony at that time, sir?

A I believe so.

Q Regarding Pioneer Development?

A I believe so, yes.

Q And you never mentioned Mr. Zuber in all that testimony, did you, sir?

A Again, unless I read it, I don't know.

MR. GREENBERG: May we have the same concession, your Honor?

THE COURT: Will you make the concession, Mr. Walker?

MR. WALKER: Your Honor, if you will bear with me just a minute.

THE COURT: Perhaps to save time, you can make the representation, Mr. Greenberg.

MR. GREENBERG: I will make the representation, your Honor.

I have reviewed it and Mr. Zuber's name is not in it, sir.

THE COURT: If there is anything different, Mr. Walker, you tell us.

MR. WALKER: Very well, your Honor.

BY MR. GREENBERG:

Q Now, was your memory of these events better in June of 1970, sir, than it is this date?

A Of course.

Q And was it also better in November of 1973 than it was on this date?

A Yes.

Q Now, I want to direct your attention to certain conversations about which you testified on direct examination, Mr. Clegg. I am going to ask you some questions about them.

You testified to various conversations with Mr. Segal up in Reno and Dallas, is that correct?

A That's correct.

Q Mr. Zuber was not at those, right?

A He was not.

Q And did you ever discuss what was mentioned at those meetings with Mr. Zuber?

A I never did.

Q Now, you met with Mr. Scardino in Reno on several occasions, too.

A That's correct.

Q Now, Mr. Zuber was not present at any of those meetings?

A He was not.

Q And you never discussed those matters with him, did you?

A I never did.

Q At various times in 1969 and '70, during the period when you were involved with Pioneer, you had numerous meetings with Burney Acton, is that correct?

A That's correct.

Q Regarding affairs of the company?

A That's correct.

Q And Mr. Zuber was not present at any of those, was he?

A He was not

Q And you never discussed those matters with Mr Zuber, did you, sir?

A No, I didn't.

Q Now, in all of your conversations -- how many times did yout meet with Jay Walker?

A Very frequently.

Q I beg your pardon?

A Very frequently.

Q Was Mr. Walker present at any of those meetings?

A No, he was not.

Q Did you ever discuss the matters discussed with Mr. Walker with Mr. Weber?

A I did not

T6 Q Was Mr. Zuber present at any of your meetings with George Aaron?

A No.

Q Did you ever discuss the matters or discuss Mr. Aaron with Mr. Zuber?

A No.

Q I ask the same questions regarding Mr. William Casey.

MR. WALKER: Objection. It is repetitive. The evidence is established when Mr. Zuber [illegible] this situation.

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THE COURT: I don't see anything in establishing the times when he was not present. The testimony, as I recall, were these two instances.

MR. GREENBERG: Would the court permit one more along that line?

Q With reference to the Century Plaza Hotel meeting in Los Angeles, Mr. Zuber was not present?

A No.

Q Did you ever discuss that meeting or what took place there with Mr. Zuber?

A No.

Q When was it that you first spoke to Mr. Murray Acton about acquiring control of Pioneer?

A To the best of my recollection, again, I was being informed of what was happening. Mr. Roy Lewis and Mr. Acton and Mr. Ed May and Mr. Walker, Jay Walker, were doing this some time in the very early spring.

THE COURT: When did they first tell you about it?

THE WITNESS: Early in the acquisition of it.

THE COURT: Some time in October?

THE WITNESS: No, no, it was much earlier, like back in April.

Q When did Mr. Acton make the proposal to you? He got you involved?

A Yes.

Q When did he make that proposal to you, sir?

A Some time when they needed money for American Aluminum and Steel, I was running an alarm company and I was not involved, and he told me about they were trying to put a merger together between a public company and American Aluminum and Steel and they needed some operating capital, and that is how I got involved.

Q But you are certain that Mr. Acton made this proposal to you about acquiring control of Pioneer, he brought you into it?

A Correct.

Q Let me ask you, sir -- I know it has been a while

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mmh3 Clegg-cross

but I want to ask you in your testimony before the Securities and Exchange Commission in Los Angeles on June 23rd you were asked this question and gave this answer, page 9 --

MR. WALKER: Does this relate to a prior question and answer?

b2 MR. GREENBERG: Yes.

Q "Q How did Mr. Acton propose to you that you would obtain control of the company?

"A He never mentioned this to me."

Were you asked that question and did you give that response, sir?

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A If that is what it says.

Q Let me show it to you.

A You mentioned the word "control," which is probably the key word we are talking about now. At that time when Mr. Acton talked to me about it, the only thing that he was talking to me about was raising capital for American Aluminum and Steel, which was being merged in with this public company.

Q He did not mention the matter of control of Pioneer with you?

A He discussed Mr. Aaron acquiring shares from the old stockholders.

mmh4 Clegg-cross

Q Let me ask you simply --

A I'm not sure if he meant control at that point. I didn't understand control until September. That is when I got more aware of what was happening because of the people I had put into the company who now wanted their money back.

Q Let me ask you another question. Going back again to your meeting with Mr. Zuber in between December '69, and New Year's, is it correct, sir, that Mr. Zuber did not say anything to indicate he knew why the stock was not supposed to be sold?

A No, he was not concerned with anything, except where the money was.

Q Was it your belief while you were involved with Pioneer Development Corporation that the registration statement with the Securities and Exchange Commission was not required to be filed, sir?

THE WITNESS: Would you repeat the question?

THE COURT: Did you know that a registration statement was not required?

THE WITNESS: Yes, based on what our attorney had told us about the grandfather clause and pre-SEC trading companies, that you didn't need a new registration or the over registration was at the time because it had been in

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mmh5 Clegg-cross

effect for the SEC was set up.

THE COURT. Would you tell us, what did you tell this attorney about what you were doing with the Pioneer stock?

THE WITNESS: This attorney had been involved with it for many months before I was.

THE COURT: That is not what I asked you. What did you tell him?

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THE WITNESS: I didn't tell him anything.

THE COURT: Were you present when anybody told him anything about what was going on with Pioneer stock?

THE WITNESS: I only became --

THE COURT: Please just listen to my question. Were you present when anybody told him anything about what you and your group were doing about Pioneer stock?

THE WITNESS: Yes, the first meeting, which was the day they made me president at the Mapes Hotel in October

THE COURT: What was told to him at that time?

THE WITNESS: What was told to the attorney?

THE COURT: Yes.

THE WITNESS. He did all the talking.

THE COURT: Nobody else did any talking at all?

THE WITNESS: Well, I don't remember the details of the conversation.

THE COURT: Do you remember the substance of it?

THE WITNESS: The substance was that this public company was about to trade, that before it did, certain things had to be done, like something had to be filed with the Securities and Exchange Commission as far as being in the pink sheets, assets had to be officially incorporated into the company before it was reactivated; we were to be sure not to deal with any stocks that had a legend on them. He explained what a legend stock was, and that any of the shares of the old shareholders were free trading stock.

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THE COURT: Did you say anything to him about this plan to acquire stock from the existing shareholders?

THE WITNESS: I did not.

THE COURT: Did anybody?

THE WITNESS: I'm sure Burney Cotton did.

THE COURT: In your presence?

THE WITNESS: No, not in my presence.

Q Well, is it a fair statement, then, in your efforts to learn all these things that you say the attorney advised, was it your intention to handle Bioner in a lawful and proper manner?

A Absolutely.

Q With reference to the mercury mine, sir, was it

your belief if you could make the mine profitable you could get Pioneer off the ground?

A Yes.

Q You relied on an assay report?

A Yes, plus going out to the mine, like with Burney and other engineers whom I had met who came back with glowing reports.

Q Did you also review an economic feasibility report regarding the mine?

A Yes.

Q Were you aware of the offer from the Hughes organization for the mine?

A From a hearsay standpoint I was.

Q How much, sir, to the best of your recollection did you invest personally out of your own pocket in the mercury mine from beginning to end?

A In excess of a hundred thousand.

Q Dollars?

A Yes.

b3 Q Now, after you terminated your association with Pioneer in 1970 you moved out to the mine site?

A That is correct.

Q You moved your family out there?

A And my father-in-law and my wife and Burney's

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mmh2 Clegg-cross

family and so forth.

Q Did you acquire any indebtedness in connection with this move in order to make the move?

A Yes, I did.

Q Will you describe that, please?

A Oh, I bought on my own personal credit many mobile homes for everyone to live in, vehicles, construction equipment, and borrowed money from friends and everybody else to help get it up to production.

Q Is the amount you're talking about included in the $100,000 plus figure that you mentioned?

A No, that was cash. There was a lot, maybe another 200,000 in indebtedness that was never paid when we couldn't get enough commercial ore.

Q So you actually put out of pocket, as I understand it, approximately $100,000 cash, perhaps a little more. Is that your testimony?

A Yes.

Q And in addition to that you acquired an indebtedness of approximately an additional 200,000 which you were never able to repay?

A That is correct.

Q Now, with reference to the American Aluminum and Steel plant, that was in the picture when you arrived?

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Is that correct?

A That was already out of the picture by the time I got in. By the time I became president is really when I got involved, and at that time the principals of American Aluminum and Steel pulled out for some reason -- I don't understand why.

Q Oh, I see.

Now, during your relationship, during your entire relationship with Pioneer, Mr. Clay, was it ever your intention to defraud anyone?

A Absolutely not.

Q Was it your intention to use the mails and means of interstate communications to defraud anyone?

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A No.

MR. WALKER: Objection, your Honor.

MR. GREENBERG: State of mind.

THE COURT: Sustained.

Q During your entire relationship with Pioneer, Mr. Clay, did you ever think you were doing anything wrong?

MR. WALKER: Objection.

THE COURT: Sustained.

Q Did you think you were doing anything unlawful?

MR. WALKER: Objection, your Honor.

THE COURT: Sustained.

mmh10 Clegg-cross

Q Prior to the time that Mr. McKibbon took his stock he had given a firm promise that he would not sell it. Is that correct?

A That is my understanding.

Q You later learned, of course, that he did?

A Yes, sir.

Q Was the stock that McKibbon got, that came from the old shareholders? Is that correct?

A That is correct.

Q What was your understanding of what was to be done, sir -- excuse me -- let me begin that over.

What was your understanding of how money was to be obtained by McKibbon?

A McKibbon told Burney that he had a loan set up with a Catholic college in Berkeley, in a trust fund that would hold the stock for two years and would loan us money on it and we could pay them back over a two-year period and they would not sell the stock.

MR. WALKER: Your Honor, can we have the basis of that conversation, whether or not it was hearsay or what the basis was? Who he discussed that with?

THE COURT: And who was present.

THE WITNESS: Mr. Acton related this to me.

Q The stock was to be pledged not in Tucson, but

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in Berkeley, California?

A Yes.

Q Do you know a Catherine Clegg?

A No. I think I know what you're referring to.

THE COURT: Please let counsel ask the question.

Q In your testimony before the Securities and Exchange Commission in June of 1973 June 23rd, Mr. Clegg, did you testify that that money was supposed to [illegible]

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MR. WALKER: Page, please.

MR. GREENBERG: 22.

Q -- did you testify that Mr. McKibbon was supposed to obtain that from Catherine Clegg?

A That is a misprint. That is supposed to be a Catholic college.

Q I suspected that. I wanted you to clear it up. Thank you, sir.

Mr. Clegg, from all of your conversations with Mr. Zuber, please tell me if it was ever your understanding to do the following: To secure control of many thousands of shares of stock, never registered with the SEC, in an inactive shell corporation, namely, Pioneer, then to establish an artificial market in the stock through manipulative devices, including [illegible] at arbitrarily selected prices, touting, giving assurances against loss,

and directing traders, and then finally to sell, pledge and distribute this unregistered stock at artificially high prices, to purchasers and lenders in order to fraudulently obtain many hundreds of thousands of dollars at their expense.

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MR. WALKER: Objection.

THE COURT: Sustained.

MR. GREENBERG: Would the Court hear me?

THE COURT: Not with that question, I won't. Too many questions in one. It calls for this witness' state of mind, which is not in any sense material in this case. He has pleaded guilty. His state of mind doesn't matter.

MR. GREENBERG: His state of mind relating to what --

MR. WALKER: Objection to any speech.

THE COURT: Sustained. The question is compound. I don't preclude you from breaking it up into individual items.

Q Let me ask it again: In your conversations with Mr. Suber, was it ever your understanding that you and he had agreed to secure control of many thousands of shares of stock never registered with the SEC?

MR. WALKER: Objection. It calls for the operation of this man's mind.

THE COURT: Did you ever express it so many words

with him to do that?

THE WITNESS: Never.

Q Did you ever agree with Mr. Zuber to establish an artificial market in the stock through manipulative devices?

MR. WALKER: Objection, your Honor. This has been gone into.

THE COURT: Overruled.

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Q You may answer, sir.

A No.

Q Did you ever agree --

THE COURT: This is repetitive. There has been no testimony about he and Zuber participating in any of these things.

MR. GREENBERG: I prefer to finish the question, if I may.

THE COURT: You may be playing with fire.

MR. GREENBERG: May I have the last question, sir.

(Question read.)

MR. WALKER: Objection, your Honor. Repetitive now.

THE COURT: Yes. Sustained.

MR. GREENBERG: Would the Court's ruling be the same as to the remaining questions?

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THE COURT: Ask your questions.

b4 Q Did you ever reach an agreement with Mr. Zuber to sell unregistered stock at artificially high prices?

MR. WALKER: Objection, sir. No basis for the question.

THE COURT: Sustained.

Q Did you ever have a conversation with Mr. Zuber in which he agreed to fraudulently obtain many hundreds of thousands of dollars at purchasers' and lenders' expense?

MR. WALKER: Objection.

THE COURT: Overruled.

A No, I did not.

MR. GREENBERG: I have no further questions.

CROSS EXAMINATION

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BY MR. NEWMAN:

Q Mr. Clerk, will you give us your educational background?

A I have a Doctor's degree in psychology.

Q From which institution, sir?

A Catholic University of America, Washington, D.C.

Q Could you give us briefly your business background up until you became president of Pinecam Development?

A My first job out of college was Blue Cross insurance, from 1964 through 1966 as a manager in the public relations end of it.

Q After that?

A After that I started an alarm company which I sold to Schick Electric.

Q Were you the president of the alarm company or the owner?

A President and half owner.

Q After you sold your interest in this alarm company to Schick, did you stay on as an employee of Schick?

A They gave me a management contract. It was during the time of my management contract that all of this was going on with Pioneer, with American Aluminum and Steel.

Q Now, there came a time in January of 1970 that you and Mr. Acton met at the mine site, Lone Tree Mine site, and Mr. Finkelstein was there?

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A What time? What date?

Q Some time in January of 1970.

A That is correct.

Q You testified that this mine never made any money.

A That is correct.

Q Nevertheless, while you were there with Mr. Finkelstein and Mr. Acton there were the beginnings of mi...

operations? Isn't that correct?

MR. WALKER: Objection. That is a conclusion.

THE COURT: Form.

MR. NEWMAN: I withdraw the question.

Q Mr. Clegg, would you tell us in your own words what kind of machinery there was at this mine site when Mr. Finkelstein was there with you and Mr. Acton?

A To the best of my recollection there was a small retort.

Q Will you tell us what a retort is?

A A retort is a furnace that fires cinnebar ore into metal.

Q You mentioned the word cinnebar ore.

A Cinnebar is the red stuff in the ground that they make mercury out of, and in this mine it was like all over the surface.

Q Excuse me.

A It was lying on the surface; it was a surface operation. It was not mining into the earth. It was basically an operation where the ore was scooped off the ground and put in a furnace and converted into mercury.

THE COURT: A strip mine?

THE WITNESS: A strip mine, yes, your Honor.

Q At that time when Mr. Finkelstein was there in

January of 1970 there was a bulldozer there?

A That is correct.

Q And this bulldozer was bulldozing some of this earth containing this red ore, this mercury ore, and it was taking it back in trucks to the retort? Is that correct?

b5 A No, they were not using the retort then. They were experimenting with a system of concentration tables called the Cully Mill tables or something.

Q What is that?

A It was a new form of concentrating ore, whereby the ore was put on the surface and was shook, and heavier ore fell down which had the cinnebar in it, and the lighter ore was scooped off the top. That is the system when Mr. Buttram was there at the mine.

Q Was Mr. Buttram there?

A Yes, he was.

Q Mr. Buttram, was he the inventor or the inventor of the Cully system?

A He was the owner of it. He didn't invent it. He bought the patents from somebody else.

Q Was Pioneer the owner of any of these patents involving the Cully system? Or did it have any options to buy these patents?

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A I don't recall. It was the only concentrating equipment of its kind in the country. But I don't think we owned the patents on it, on the Cully Mill.

Q But there was an understanding with Mr. Buttram that eventually if the ore and the process got together you would have a business arrangement? Is that correct?

A That is correct.

Q As a result of his work, your work and Mr. Acton's work, there were some projected figures about the amount of ore that could be mined per day, per week, per year? Isn't that correct?

A That was done by geological engineers. I don't know if Mr.Buttram did it. But he was very familiar with it. He was our expert that we had to check out the engineers

Q Mr. Buttram was working with geologists?

A Yes.

Q Did you ever see any of these geological reports?

A Yes, I did.

Q Did you understand them?

A Yes, I understood them.

Q Can you tell us in lay talk --

MR. WALKER: Objection. If there is a specific document, it can be referred to. I withdraw the

objection to save time.

THE COURT: I will let him answer. Go ahead. Tell us what you understand the reports to say.

A The reports were pro forma whereby they analyzed the amount of ore they had drilled down through the earth and blocked out of an area, how much ore there was, and then this ore was tested at various levels for how much cinnebar to the ton it contained, and the average report was 12 pounds of cinnebar of mercury per ton of ore.

Q Was that considered by the geologists a rich quantity?

A Yes, 2.2 is considered commercial grade, and this was 12 pounds to the ton, and they just did a pro forma. If you had a small mill and you did so many tons a day it would project out so much, and if you had a larger mill and you ran 20,000 tons a day, for example, you would get so much. It was just a simple mathematical conversion, and the process by which this could be accomplished, but it also stated that it needed $500,000 to set up to do this.

THE COURT: Where was this mine?

THE WITNESS: Dixie Valley, Nevada.

THE COURT: Was there any public transportation to the mine?

THE WITNESS: No, we had to drive over a hundred

miles on a dirt road to get to it.

Q How big an area was this Lone Tree Mine?

A Quite extensive. It couldn't have been mined out in several lifetimes. It was very, very large.

Q Over a hundred acres?

A Oh, yes.

Q 500 acres?

A It was a whole mountain. I don't know.

Q Was it a mountain?

A Yes, a whole mountain full of ore.

Q When Mr. Finkelstein was with you at this time at the mine, did you ever talk to him about the acquisition of stock and any role that he might play in this?

A The acquisition of what stock?

Q Of Pioneer stock.

A I don't understand. You mean Mr. Finkelstein would acquire stock or buy stock?

THE COURT: Did you ever talk to him about buying any stock? You or anybody else.

THE WITNESS: No.

Q To your knowledge did Mr. Finkelstein ever own any stock?

A No.

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Q Was Mr. Finkelstein a director of the corporation?

A No, he was not.

Q Was he ever an officer of the corporation?

A No, he was not.

Q Was he ever an employee?

A No, he was not.

Q At any time did you ever discuss with Mr. Finkelstein any plan or scheme involving the sale of the stock?

A No.

Q At any time did you ever discuss with Mr. Finkelstein any scheme to transport this stock across the country or any place?

A No.

Q Did you ever at any time talk to Mr. Finkelstein about the mails to defraud anyone with this stock?

A No.

Q When for the first time did you learn of any illegality involving Pioneer?

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MR. WALKER: Objection, your Honor.

THE COURT: Sustained.

MR. NEWMAN: I have no further questions. Thank you.

MR. DOYLE: May I proceed, your Honor?

CROSS EXAMINATION

BY MR. DOYLE:

Q Mr. Clegg, aside from Mr. Mariot, your father-in-law, Mr. Brighan and Mr. Morgan, there were also, I believe you testified on direct examination, other persons who were friends of acquaintances to whom you sold Pioneer Development Corporation stock at prices ranging from $2, $2.50, $3?

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A That is correct.

Q Did you tell those purchasers that you and Mr. Acton and Mr. Aaron and Mr. Casey were at or about the same time in the process of acquiring shares of Pioneer Development Corporation from present existing shareholders at ten cents a share?

A Again, I was not acquiring stock. But in dealing with these people who we sold them the stock I don't believe we ever mentioned it was being acquired at ten cents a share.

Q So you were getting $2 a share for stock that you were picking up at ten cents and they didn't know it?

A Yes.

Q Did you tell that set of facts to Mr. Fraiser, the company's attorney?

A Again, I was not involved with that portion of it.

Q Is it your answer that you had no conversation with Mr. Fraiser about that?

A That is correct.

Q Do you know as a matter of fact whether Mr. Fraiser was aware of the fact that you were putting your friends into Pioneer Development stock?

MR. WALKER: Objection.

THE COURT: Sustained.

Q What was your agreement with Mr. Alan Segal with respect to the obtaining of funds for Pioneer Development Corporation?

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A I made him aware of the fact that we needed half a million dollars to operate the mine, which was the principal asset of the company and Mr. Segal promised us that if we would give him half the stock he would borrow or supply or somehow obtain funds for that mine to go into operation.

THE COURT: Half of what stock? Whose stock?

THE WITNESS: Half of the stock that had been acquired from the previous stockholders.

THE COURT: Stock that you accumulated from the previous stockholders?

THE WITNESS: Yes.

THE COURT: And how many shares was that at the

time you talked to Segal?

THE WITNESS: It's a matter of record. I am going to guess.

THE COURT: Would it be 111,000? Something in that order?

THE WITNESS: It could have been more. Van Der Steen was a hundred thousand in one certificate. So it was probably more like 180,000. somewhere there.

MR. WALKER: I believe it is in evidence that 85,000 shares were placed in the name of Francine Zahl and given to Segal and 26,550 shares were given to Segal, but they were in the name of Margaret Morgan and Kaighan. That is a total of, I believe, 111,550 shares.

THE COURT: That is what I thought.

Q Now, the money that Segal was supposed to remit to Pioneer Development Corporation, was that supposed to be a loan from Mr. Segal to Pioneer Development Corporation?

A Yes, it was.

Q Was it supposed to represent the proceeds of the sale of shares?

A Not necessarily, no.

Q Was it supposed to represent the sale of his interest in the Riverside Motel?

A No. He really didn't specify where the funds

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were coming from.

Q Did Mr. Segal tell you that he had an interest in the Riverside Hotel?

A Yes, I was aware of that.

MR. WALKER: Objection. I move to strike it as hearsay.

THE COURT: Sustained.

MR. DOYLE: Your Honor, let me try it another way.

THE COURT: It is hearsay.

Q Did Mr. Segal tell you that he was having difficulty because of an Internal Revenue Service lien on the hotel?

MR. WALKER: Objection.

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THE COURT: Sustained.

Q Mr. Segal paid $5,000 to Mr. Aaron for shares in Pioneer Development Corporation? Isn't that correct?

A I don't know.

Q Did you ever have a conversation with Mr. Segal about the payment for shares in Pioneer Development Corporation that he was acquiring --

MR. WALKER: Objection. He has answered he doesn't know.

THE COURT: That still does not preclude the

conversation. Overruled.

A I am not aware of any payment to Mr. Aaron for the stock.

THE COURT: Did you have a conversation with him about it?

THE WITNESS: No.

Q Mr. Segal paid ten cents a share for his portion of the Van Der Steen stock? Is that correct?

A Mr. Segal paid ten cents for all the shares of the Van Der Steen stock, but was given half of them or whatever amount that he was given.

Q And he paid $6500 in transfer fees? Is that correct?

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A Approximately, yes.

Q Now, at or about the time that the stock began to trade in New York did you control any shares of Pioneer Development Corporation?

A Could you define "control."

Q Did you own any shares of Pioneer Development Corporation?

A No.

Q Did Mr. Aaron own any shares of Pioneer Development Corporation?

A No.

MR. WALKER: Objection. Your Honor, I think that asks for a legal conclusion. I move to strike.

THE COURT: If the witness knows he can answer it.

Q As of the time that the shares began trading in New York, any of the preexisting shareholders of Pioneer Development Corporation or any of the new shareholders, such persons that you had sold shares to were free to trade their shares on the open market? Isn't that correct?

MR. WALKER: Objection.

THE COURT: Sustained.

Q Did you have any power or control of any nature whatsoever over the disposition of shares of Pioneer Development Corporation that were in the hands of the preexisting shareholders or in the hands of the new shareholders to whom you sold the shares?

A No, I did not.

Q You told Mr. Segal in the course of your conversation with him prior to the opening of the stock in New York that you hoped to raise funds by arranging for the placement of Pioneer shares for loans? Isn't that correct?

A I am going to answer yes, because that is for a general impression that was the game plan of it.

Q That was the game plan?

A Yes.

Q And you told him that was the plan?

A Yes.

Q You had no intention of selling the shares?

A No.

Q You did sell some shares, however?

A I did not sell any shares.

Q Did you sell a thousand shares of unregistered or a thousand shares of Pioneer stock through Grimes, Hopper & Messer in Los Angeles?

A I most certainly did not.

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Q Do you know who sold those shares?

A Jay Walker.

Q Did Jay Walker receive the proceeds?

A Again to my knowledge, yes, because I didn't receive any of the proceeds of it.

Q Are you aware that that is charge in count 1 of the indictment to which you pleaded guilty that you sold those shares?

A I'm not aware of it.

Q You're not aware of it.

Now, the various items of information that you furnished concerning the value of the mine and the

potential of the mine, you developed that very fully in your conversation with Mr. Segal during the course of your meetings with him before the stock opened in New York?

MR. WALKER: Objection. That calls for a conclusion.

THE COURT. Sustained.

Q Did you attend the meeting with Mr. Buttram at which Mr. Segal was present?

MR. WALKER: Could we have the time and place?

MR. DOYLE. He hasn't answered yes or no yet.

A Mr. Buttram met with Mr. Segal, which I arranged

Q Excuse me.

A I arranged a meeting between Mr. Buttram and Mr. Segal and I don't recall at this moment when it was or where it was.

Q You did not attend the meeting?

A I don't remember for sure.

Q What was the purpose of arranging the meeting?

MR. WALKER: Objection, your Honor, That calls for a conclusion.

THE COURT: Sustained.

Q Mr. Clegg, did you participate in the preparation of a press release on behalf of Bunker Development Corporation on or about February 24, 1970?

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A Not to my recollection.

MR. DOYLE. Your Honor, I am up to Exhibit I, which I will mark on this and show to Mr. Clegg.

Q Now I ask you if this document refreshes your recollection in that regard?

MR. SIFFERD: Wasn't this previously offered as Exhibit E by you?

MR. DOYLE. Yes. I'm sorry.

THE COURT. Call it Exhibit E.

THE WITNESS: Was the question, did I prepare it?

THE COURT: Did you participate in the preparation of it? Does that refresh your recollection?

A Not directly.

Q What is your best recollection?

A That Mr. Segal prepared this from general conversations we had had at all our meetings. I don't recollect any specific press release being prepared. The information there was derived from myself and Mr. Acton.

Q Did you have a conversation with Mr. Segal in which he told you that he would take a group of materials about Pioneer Development Corporation in order to submit them to a broker in New York to see if he would be prepared to [illegible] the stock of Pioneer Development Corporation?

A Yes.

Q Did you give Mr. Segal a group of materials for that purpose?

A Yes, we did.

Q Did you suggest to Mr. Segal that the stock open at 5 because you had put a group of your friends in Pioneer Development Corporation at $2, $2.50 a share?

A That is correct.

Q Did Mr. Segal say that he would undertake to submit that material to a broker to have him evaluate it to determine whether it could open at 5?

A No.

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Q Did he say he would give it to a broker?

A No. He just said he would open it at 5.

Q Did he say he would attempt to open it at 5?

A Attempt to open it at 5.

Q Mr. Clegg, on April 25, 1974, were you found guilty on 13 counts of wire fraud by a federal jury sitting in Houston, Texas?

A Yes.

MR. DOWD: Your Honor, may I amend that question to March 28, 1974, with respect to the verdict.

THE WITNESS: Yes.

And on April 26, 1974, were you sentenced to serve a total of five years' imprisonment in connection

with that wire fraud?

A That is correct.

Q Did that wire fraud involve the sale by you of black boxes or blue boxes consisting of apparatus to obtain free long distance telephone service from the Telephone Company?

A No.

Q What did that conviction involve?

MR. WALKER: Objection, your Honor.

THE COURT: Sustained.

And you are presently out on bond pending appeal?

A That's correct.

MR. DOYLE: Nothing further, your Honor.

THE COURT: Any other cross?

EXAMINATION

BY MR. PAPE:

Q Mr. Clegg, in October of 1969, do you know Anthony Scardino made his permanent residence?

A Yes, I did.

Q Where is that?

A Houston, Texas.

Q Do you know how he was employed at that time?

A Yes.

Q How so?

A Interior design of Foley's Department Stores.

Q Do you know what Mr. Scardino was doing in Reno, Nevada, at that time?

A Yes.

MR. WALKER: Objection, your Honor. I think it all calls for hearsay.

THE COURT: Does he know what he was doing in Nevada? He may have been visiting him. I don't know the answer was.

A I was working for Mr. Scardino in Nevada.

Q What was he doing in Nevada?

A He owned part of the Riverside Hotel and we were flocking his hotel for him.

Q When you say "we," are you talking about you and Burney Acton?

A That is correct.

Q At that time did you and Burney Action own a company that did walls?

A We did.

Q And you all were doing the walls at the Riverside Hotel which Mr. Scardino was refurbishing, is that correct?

A That's correct.

Q Did you meet Richard McKibbon at that time?

A I did.

Q Do you know what his relationship was to Mr. Scardino?

A He was the entertainment director for the hotel.

Q Was he employed by that hotel?

A Yes, he was.

Q How long has it been since you have seen Richard McKibbon?

A Since maybe November of that year.

Q Do you know where we can find Richard McKibbon?

A No, I don't.

Q Now, you say Mr. Scardino introduced you to Alan Segal, is that right?

A That's correct.

Q Do you know how many meetings, at how many meetings you were present with Mr. Scardino and Mr. Segal, if any?

A I don't think there was -- I don't remember specifically any, where they were both together.

Q Were you ever at any meeting with Mr. Scardino during that period of time at which was discussed in Mr. Scardino's presence any scheme to artificially raise the price of Pioneer stock?

MR. WALKER: Objection, your Honor.

THE COURT: Overruled.

A No.

Q I think you testified that there care a time in early November when you and Mr. Acton decided to try to borrow some money by pledging shares of Pioneer stock, is that right?

A That's correct.

Q I think you also testitied that Mr. Acton really had the conversations with M. Scardino or Mr. McKibbon, is that right?

A That's correct.

Q But you have talked with Mr. Acton, you did at that time, concerning those conversations, is that right?

A That's correct.

Q Was it your understanding from talking with Mr. Acton at that time that McKibbon was really the one in charge of placing the loans?

MR. WALKER: Objection.

THE COURT: Sustained.

Q When did you have conversations with Burney Acton concerning using the stock as collateral for Loans in early November of 1969?

A When?

Q Yes.

A In early November.

Q How many conversations?

A I don't recall.

Q Would you make an estimate, please.

A I would say several, due to the fact of the urgency of the matter.

Q And did Mr. Acton tell you -- were these face-to face conversations, telephone conversations?

A Face-to-face.

Q Was anyone else present at any of these conversations between you and Burney Act?

A No, they were not.

Q And what did Mr. Acton tell you in those conversations concerning the use of this stock?

MR. WALKER: Objection.

THE COURT: Overruled.

A That Tony had entrusted the situation to McKibbon, McKibbon had lined up a loan for us, a Catholic Trust Fund, and that the money would be coming down any day, that Burney was giving stock to McKibbon for this purpose through Scardino.

Q Do you know how many shares of stock were entrusted to McKibbon for the purpose of obtaining those loans?

MR. WALKER: Objection on the conclusion. There is no foundation that they were entrusted just to McKibbon.

THE COURT: Sustained.

Q In these conversations you had with Mr. Acton, did he ever tell you how many shares were to be used to obtain loans?

A Yes.

Q Do you remember how many?

A I am going to be not specific. It was in the area of 20,000, 20-some thousand shares.

Q But you cannot remember for sure, is that right, Mr. Clegg?

A That's correct.

Q Do you remember testifying before the Securities and Exchange Commission in Los Angeles on June 23, 1970?

A Yes.

MR. PAPE: Page 49.

Q If I may use your testimony on that dawte to refresh your memory, the question was, the second part of the question:

"Do you know what Jay Walker did with those two blocks?"

Your answer at that time was:

"No, I know the 29,000 went to McKibbon supposedly for a company loan."

Now, does that refresh your memory?

A Yes.

Q So as well as you can remember, the understanding you got from your conversation with Mr. Acton was that 29,000 shares went to McKibbon, is that right?

MR. WALKER: I object to this, your Honor.

THE COURT: Overruled.

A That's correct.

Q I am not sure who was asking you the question at

that time, Mr. Clegg, but the next question was:

"I only have 18,000 given to McKibbon" --

MR. WALKER: Objection, your Honor. If he wants to ask questions rather than just read the testimony --

THE COURT: Yes, you must confront the witness.

Q If the transfer records -- you are familiar with the transfer records of Pioneer, are you not?

A Yes, I am.

Q If the transfer records for November of 1969 indicate that only 18,000 shares were transferred to Richard McKibbon, can you remember an explanation for that?

MR. WALKER: Objection as to form.

THE COURT: Sustained as to form. You can put a leading question and then perhaps I will know what you are driving at, but this way I don't.

Q Is it possible that not all of the 29,000 shares were transferred directly to McKibbon's name?

MR. WALKER: Objection, your Honor. Anything is possible. He is just speculating in never-never land.

THE COURT: The form is bad.

MR. PAPE: May I have the exhibit? I don't know which exhibit it would be, the Government exhibit concerning transfer to McKibbon.

(Pause.)

MR. WALKER: Is there any objection to that being received?

MR. DOYLE: No objection.

Q I show you what has been marked as Government's Exhibit 1-M for identification.

Do you recognize that as a transfer order from Pioneer Development Corporation?

A Yes.

MR. PAPE: Do you have any objection?

MR. WALKER: No, I would ask --

THE COURT: Received.

(Government's Exhibit 1-M was received in evidence.)

Q Now, this is a Pioneer Development Corporation transfer record that reflects that on November 21, 1969, 18,000 shares of Pioneer stock were transferred in one certificate to Richard McKibbon -- or two certificates, one 8000, one at 10,000.

Would you remember what happened or how the 11,000 shares got to McKibbon?

MR. WALKER: Objection, your Honor.

THE COURT: Sustained.

MR. WALKER: No basis that it went to McKibbon.

THE COURT: Do you know what happened to the other 11,000? Did you ever know?

THE WITNESS: No.

Q Do you remember?

A I don't remember. I wasn't involved. It was Burney that was handling that.

Q Let me again call your attention to your testimony before the Securities and Exchange Commission in Los Angeles on June 23, 1970, after you had testified that you knew that 29,000 went to --

MR. WALKER: I object to the form of the question.

THE COURT: Yes.

Q The question put to you was --

MR. WALKER: Objection.

MR. PAPE: I am refreshing his memory, your Honor.

MR. WALKER: He can show it to him.

THE COURT: Show it to him to refresh his memory. He can read.

(Pause.)

Q Now, do you remember what your answer was at that time?

A My answer was that he had gotten some of the stock in street name.

Q When you say in street name, Mr. Clegg, do you mean like a nominee or something like that?

A What I meant by street name was old shareholders who had given their stock in and just delivered to McKibbon direct.

MR. PAPE: For the record, Government's Exhibit 1-P shows a transfer on November 6, 1969, to Tony Scardino in one certificate of 5000 shares.

Government's Exhibit 1-P shows -- this is not it.

I apologize for the delay, your Honor.

THE COURT: Mr. Walker, may I suggest that you get somebody else to come into the courtroom to help you keep track of these exhibits?

MR. WALKER: Yes, your Honor.

THE COURT: So whenever we want them, we don't have to fumble for an hour.

MR. PAPE: May the record also reflect that Government's Exhibit 1-H reflects a transfer of Pioneer stock on November 14, 1969, to Tony Scardino, in the amount of 6000 share.

And if I may ask a mathematical deduction question, your Honor.

Q Does 6000 plus 5000 plus the 18,000 in McKibbon's

name total 29,000?

A Yes, it does.

Q Now, in these conversations you had with Burney Action at that time concerning using that stock to obtain loans for Pioneer, did Mr. Acton ever mention anything to you about lending Mr. Scardino moeny out of the proceeds of those loans?

A It is a tough question from the standpoint of time. We loaned Scardino money for this out of our own pocket and, you know, vaguely I remember loaning Scardino money, and to tie it into that particular stock, I just can't recall.

Q Now, you testified also that at a subsequent date, between December of 1969 and January of 1970 you talked with Mr. Acton by telephone concerning a meeting at a Holiday Inn in Reno, is that correct?

A That's correct.

Q And did you not testify earlier today that during the course of that telephone conversation Mr. Acton told you that Mr. McKibbon had confessed at that meeting that McKibbon had sold those shares without Mr. Scardino's knowledge and had kept the proceeds?

A Yes, he did.

Q Has Anthony Scardino ever misrepresented anything

concerning Pioneer Development in your presence?

MR. WALKER: Objection, your Honor.

THE COURT: Sustained.

MR. PAPE: I have no further questions, your Honor.

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MR. WINOGRAD: No questions, your Honor.

THE COURT: All right, we will recess now.

MR. WALKER: Your Honor, I have a few brief questions for redirect.

THE COURT: Think about it overnight.

MR. WALKER: Very well.

THE COURT: Tomorrow at 10 o'clock. See whether they are really necessary. Some of these trips aren't necessary.

Don't talk about the case. Don't let anybody talk about it with you and, again, I ask you please to be on time. There are 40 people who are being delayed here simply because one or two of you are straggling in 15 to 20 minutes late, and if that happens, as I have told you, we will only have to extend these sessions. Counsel are cooperating. We are all cooperating here. There are a great many things we have to do that doesn't concern the jury. We are getting here early to do it. All to the end that we won't inconvenience you, and all of

ks13 Clegg- 3...

us would appreciate a little reciprocation.

(Jury left the courtroom.)

MR. WINOGRAD: Your Honor, on behalf of Mr. Levine, I am going to renew that motion for a severance and I thought that Mr. Walker was going to present a memo to the Court today.

MR. WALKER: I did. I'm sorry, did you not receive a a copy?

MR. WINOGRAD: I did not receive a copy.

THE COURT: Where is your memo?

MR. WINOGRAD: Your Honor, I didn't know you wanted one from me because of the fact that you directed your remarks --

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THE COURT: I directed memos.

MR. WINOGRAD: Fine. I will have one tomorrow.

THE COURT: You are the moving party.

MR. WINOGRAD: I'll have it tomorrow. No pro...

THE COURT: Yes, Mr. Kirschner?

MR. KIRSCHNER: At this time, on behalf of Mr. Zuber, we move that the testimony concerning the gun be stricken or that a mistrial be declared with respect to it. It is obvious that the gun was not employed for the purposes alleged in the indictment at this point, that there was a gun. It is highly prejudicial.

ks14 5

THE COURT: Denied, without prejudice to renewal at a later date when we have heard all the evidence.

Any others?

MR. WALKER: Oh, yes, your Honor.

The only other thing is that the Government's research was not terribly productive on the waiver point.

THE COURT: I didn't think it would be.

MR. WALKER: As far as Mr. McCarthy is concerned, and I am acting accordingly.

THE COURT: I see. You withdraw --

MR. WALKER: I will withdraw it.

THE COURT: -- your application that the Court declare that he has waived his rights to assert the Fifth Amendment.

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MR. WALKER: I withdraw that.

MR. GREENBERG: Might we be sure of receiving additional 3500 material for the remainder of the week?

THE COURT: You don't have to trouble the Court with that. We can move without the 3500 material between ourselves as we have in the past.

I don't think, Mr. Greenberg, you were present at our pretrial conference, were you?

MR. GREENBERG: I beg your pardon, your Honor;

I was not.

THE COURT: I suggest you read the minutes.

Adjourned to 10.

Good night.

(Adjourned to Thursday, December 5, 1974, at 10:00 o'clock a.m.)

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UNITED STATES OF AMERICA

vs. 74 Cr. 908

HOWARD FINKELSTEIN, et al.

New York, December 5, 1974;
10.00 o'clock a. m.

(Trial resumed.)

- -

(Jury in box.)

M I C H A E L W. C L E G G , resumed.

REDIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Clegg, I believe you were asked yesterday concerning moneys that were put into the mine by yourself. I believe Mr. Doyle asked you certain questions on that. Do you recall?

A Yes, sir.

Q Sir, I believe the figure that you gave was approximately a hundred thousand dollars? Is that correct?

A That is correct.

Q Can you tell us, sir, how much of that money was put into the mine after Pioneer was sold to the group of

Marder and Cox?

A Probably $70,000.

Q You were asked questions yesterday on cross-examination by counsel for Mr. Zuber pertaining to certain visits that you made to Mr. Zuber's house after the Reno incident that you described where Mr. Zuber came to you and thereafter you made the call to Segal.

Do you recall, sir, where Mr. Zuber lived?

A Only that it was in Costa Mesa. I don't remember the name of the street.

Q In what state?

A California.

Q Now, sir, yesterday you were asked questions about the fact that the Zuber incident and the Reno meeting was not in your first grand jury testimony? Is that correct?

A That is correct.

Q You testified before the grand jury a second time and you did testify about that? Is that correct?

A That is correct.

Q The first time were you asked any questions about it?

A No.

Q Sir, you have entered pleas of guilty, have you

not, to Counts 1 and 2 of this indictment?

A Yes, I have.

Q Did you plead guilty before Judge MacMahon to those counts?

A Yes, I did.

Q Do you know who the judge is that will be sentencing you?

A No, I don't.

RECROSS EXAMINATION

XX BY MR. GREENBERG:

Q Good morning, Mr. Clegg.

Did you ever talk to Mr. Zuber about the mine?

MR. WALKER: Objection. Beyond the scope of redirect.

MR. GREENBERG: He asked a specific question about it, Your Honor. I have just two questions on it.

THE COURT: I will allow it. It is beyond the scope, but I will allow it.

Q Mr. Clegg, did you ever tell Mr. Zuber about the mine?

A I'm sure I did.

Q Did you tell him of your hopes for its financial success?

A Yes, I'm sure I did.

MR. DOYLE: No questions, your Honor.

MR. NEWMAN: No questions.

MR. WALKER: No further questions.

(Witness excused.)

MR. SIFFERT: The Government calls Alan Dertinger.

- -

A L A N D E R T I N G E R , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIFFERT:

Q Mr. Dertinger, how are you employed?

A Operations officer at the American National Bank in Denver.

Q How long have you been so employed?

A A year and a half.

Q What are your duties as operations manager?

A I oversee the management of four customer service areas.

Q I show you Government's Exhibit 22-A and ask if you can identify it?

A It's a cashier's check on our bank.

Q And the second document attached to it?

A Is a photocopy of our registered copy of that same check.

Q Is it the regular course of business of the American National Bank to make an retain negotiated copies of cashier's checks?

A Yes, it is.

Q And microfilm copies of registered copies of cashier's checks?

A Yes, it is.

Q Were these kept and maintained in the regular course of business?

A Yes, they were.

MR. SIFFERT: I offer them in evidence.

(Government's Exhibit 22-A was received in evidence.)

xx Q Referring to the registered copy, could you explain what the purchaser's signature, G. T. Parris means?

A He is the individual that came in and purchased --

MR. GREENBERG: Could you ask the witness to speak up?

A The purchaser's signature indicates that is the individual who came into the bank on November 10 and purchased that said document.

Q And the document that he purchased was a cashier's check made out to Richard McKibbon in the amount of $32,350?

A That is correct.

Q I show you Government's Exhibit 22-B for identification and ask if you can identify it?

THE COURT: Can't you hand them all to him and ask him if he can identify all? Do it wholesale. It will save a lot of time.

Q I show you Government's Exhibit 22-B, 22-C, 22-D, 22-E, 22-F, 22-G and 22-H for identification and ask you if you can identify them?

A Yes, they are all official documents of our bank.

Q Are they made and kept in the regular course of busines?

A Yes, they are.

Q Is it the regular course of business to maintain and keep those documents?

A Yes.

MR. SIFFERT: I offer them in evidence.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibits 22-B through 22-H,

inclusive, were received in evidence.)

Q What does 22-B reflect?

A It's a bank credit advice on a wire transfer that was paid through our bank to transfer funds to the Union Bank in Tucson, Arizona, to the attention of Harvey Langle for the credit and advice of George T. Parris account at said bank of the First National Bank of Denver.

Q Does this document mean that a wire was sent on November 10 in the amount shown therein to George T. Parris?

A Yes, it does.

Q Is that the same date as the check 22-A?

A Yes, it is November 10.

Q 22-C, what does that check state?

THE COURT: You can state it, unless there is a code or something that someone can't read. They are in evidence.

If you want to read them to the jury, go ahead, or save it for a later time perhaps.

MR. SIFFERT: I would like to read them to the jury.

22-C is dated November 18, 1969, cashier's check, pay to the order of Tony Scardino $5000. Attached is a microfilm copy of the registered copy of that same cashier's check and it says purchaser's signature

A. Scardino.

Q Is 22-G a copy of a wire?

A It is a credit advice of a wire that was sent through our bank to the Federal Reserve Bank of Denver to be credited to First National Bank, Reno, Nevada, purchased by Richard McKibbon, Reno, Nevada.

T2

MR. SIFFERT: 22D is a cashier's check to Dick McKibbon in the amount of $15,441; purchaser's signature, A. Scardino.

22E is a wire in the amount of $10,000 on November 18th to Crocker Citizens Bank in the account of A.C. Enterprises.

22F is a cashier's check in the amount of $53,000 on December 16th to Richard E. McKibbon; purchaser's signature is Ruth A. Fink.

22H in evidence is an original credit advice of a wire in the amount of $5,000 on the date 12/16/69 to A.J. Scardino, and B/O means by order of -- is that correct?

THE WITNESS: By order of.

MR. SIFFERT: -- Richard E. McKibbon.

I have no further questions, your Honor.

THE COURT: Any cross-examination?

MR. DOYLE: No questions.

MR. PAPE: No questions.

THE KIRSCHNER: No questions.

THE COURT: You are excused.

(Witness excused.)

MR. WALKER: Call Ben Cohen to the stand.

B E N C O H E N, called as a witness by the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Cohen, directing your attention, sir, to 1969, did you know a man by the name of Alan Segal at that time?

A I did.

Q How long had you known Mr. Segal?

A At that time? Oh, I imagine a year or two before that.

Q Now, sir, did there come a time when Mr. Segal spoke to you about a stock called Pioneer Development Corporation?

A Yes, there was.

Q And do you recall, sir, approximately when that occurred?

A No, I can't.

Q If I showed you --

A Immediately preceding my buying the stock for him.

Q I show you a confirmation and ask you if this refreshes your recollection.

A About that time, I would imagine.

Q Give us the date then.

A 12/23/69.

Q Mr. Cohen, what was the conversation that you had with Mr. Segal at that time and where were you?

A My best recollection of it is that he had called me on the phone. Mr. Segal and I were and are good friends. And he asked me if I would buy it. He said, "Benny, I think it's all right."

I said, "Al, I don't care for stock."

He said, "Benny, do me a favor. Buy it for me."

So I did, and I sent him the stock immediately after getting it.

Q Did you receive physical certificates, sir?

A Yes, I did.

Q Did you examine those certificates?

A I looked at them, yes.

Q And did you notice anything about them?

A I noticed that it was Pioneer Development stock, and I don't know his secretary's name, but I thought it was his secretary that signed the stock. But I couldn't -- I wouldn't swear to it because I don't know her name.

Q After you received the certificates, did you make a telephone call to Mr. Segal?

A Yes, I said, "I got them, and I'm mailing them back to you."

Q Then what did you do?

A Didn't do anything.

Q Did you mail the certificates to him?

A Yes, I did.

Q Sir, how much money did you spend in purchasing this stock for Mr. Segal?

A Approximately 21,000.

Q $21,000?

A Yes, sir.

Q I show you Government Exhibit 134 for identification and ask you if you can identify this exhibit.

A Those are my checks.

Q And are there other documents?

A The other documents are what I received from the stockbroker.

Q And did you make your purchase through the firm of Chorbajian & Company?

A Yes, Chorbajian they call it.

Q Chorbajian. That is located in Miami?

A Yes, sir.

Q Did you purchase, sir, approximately 3,000 shares of stock?

A Whatever that says. Exactly 3,000.

MR. WALKER: Your Honor, I offer Government

Exhibit 134 for identification into evidence.

MR. DOYLE: No objection, your Honor.

xx (Government's Exhibit 134 received in evidence.)

Q Sir, directing your attention to approximately April 24, 1970, did you receive a payment of $11,023.05 from a Mr. Rappaport?

A Yes, for the benefit of Al Segal.

Q And did you apply those funds towards the $21,023.05 owed to you by Mr. Segal?

A That is correct.

Q Now, sir, apart from that, once that application of that money was made to the money that Mr. Segal owed you, there was still $10,000 owed you, is that correct?

A That's correct.

Q And, sir, was that money ever paid to you?

A No, it hasn't been.

MR. WALKER: I have no further questions, your Honor.

MR. DOYLE: May I proceed, your Honor?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. DOYLE:

Q Mr. Cohen, are you an attorney-at-law, sir?

A Yes, I am.

Q And are you a member of a law firm?

A Yes, Cohen & Hogan.

Q What is the address of your firm?

A 420 Lincoln Road, Miami Beach, Florida.

Q Is that where you reside?

A No, that's -- I reside at Miami Beach, yes, sir.

Q You reside at Miami Beach?

A Yes, sir.

Q Where does Mr. Segal reside at the present time?

A In Miami.

Q Now, have you brought any type of lawsuit or --

A No.

Q -- legal action --

A Al Segal I considered a friend of mine. I didn't consider that -- I considered he owed me the money, but if he had it, he had hard times since then, and I never even dunned him for the money because I liked the fellow.

Q And you still do?

A Yes, I still like Al Segal. I told that to the prosecutor.

MR. DOYLE: Thank you very much, Mr. Cohen.

MR. WALKER: No further questions.

THE COURT: All right, Mr. Cohen.

(Witness excused.)

MR. SIFFERT: The government calls Mr. Swidler.

S. Z A C H A R Y S W I D L E R, called as a witness by the government, having been first duly sworn, testified as follows:

MR. SIFFERT: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. SIFFERT:

Q Mr. Swidler, how are you employed?

A I am self-employed.

Q In what capacity, as what?

A I am a Certified Public Accountant.

Q Did there come a time that -- do you know Alan Segal?

A Yes.

Q Did there come a time where Al Segal mentioned Pioneer to you?

A Yes.

Q At that time had you had prior business dealings with Al Segal?

A Yes, I had.

Q And what was the consequence of those business dealings?

A Al Segal owed me some money.

Q Do you recall how much?

A Approximately $15,000.

Q At the time that Al Segal mentioned Pioneer, do you recall the time of that conversation?

b2 A 1969 or '70. I forget which, what specific date.

Q I show you Government Exhibit 26A for identification and ask if that refreshes your recollection.

A In '69, November, '69.

Q Was anyone present when Mr. Segal mentioned Pioneer stock?

A Will you repeat that, please?

Q Was anyone else present at that conversation?

A No.

Q Do you recall what that conversation was and would you repeat it for the jury, please?

A Well, he just mentioned that there was a new issue called Pioneer stock that was going to be coming out within a short period of time. That's all I heard.

Q What did he tell you about Pioneer stock?

A I don't recall specifically, but that it was involved in a number of acquisitions or ventures that looked very good potentially.

Q That it had good potential. Did he say that the

stock would go up?

MR. DOYLE: Your Honor, I object to the leading questions.

THE COURT: Overruled. I will allow that one. Did he?

A He anticipated that the stock would go up.

THE COURT: What did he say?

THE WITNESS: He expected --

THE COURT: What did he say? Give us his language, if you can remember.

THE WITNESS: I can't really remember.

THE COURT: Give us the substance.

THE WITNESS: But he sounded very --

THE COURT: What did he say, the best you can remember?

THE WITNESS: He was very optimistic about the position of the stock, words to that effect. I can't specifically recall words. But he exuded an optimism.

MR. SIFFERT: One minute, if your Honor please.

(Pause.)

Q I show you Government Exhibit 3515 for identification and ask if that refreshes your recollection, page 6?

A. Yes. Well, I said he made comments to the effect that he expected the stock to go up. I said he exuded an

optimism. He expected it to go up.

Q Did he show you a financial statement?

A He showed me a paper that appeared to be a balance sheet. That would be the financial statement, yes.

Q Do you recall anything specifically about that sheet, the paper?

A The paper had assets in it. I forgot the figures.

Q Did it have the name of an accounting firm on it?

A I don't think it had the name of an accounting firm on it. It was just a sheet of paper with assets and liabilities and some net worth indicated.

Q Did he show you the paper and say anything to you? Did you keep it for a long time?

A No, it was a fleeting glimpse of a financial statement.

Q And as a consequence of that conversation, what did you do? Or what was done?

A I don't understand the question. I didn't do anything. I requested -- at that particular point, Mr. Segal owed me some money and I was asking him to pay that money.

Q And did he give you Pioneer stock?

A Yes.

Q And did he say at that time that the Pioneer stock would help you recoup some of the money that he owed you?

MR. DOYLE: Your Honor, I really object to the leading questions.

THE COURT: Yes, please don'tlead, Mr. Siffert.

What did he say when he gave you the stock?

THE WITNESS: He said that this stock I could use as collateral to obtain a loan.

Q Did you obtain a loan?

A Yes, I did.

Q In how much and where?

A At the First Israel Bank and Trust Company in the amount of $10,000.

THE COURT: What did you do with the loan as against the debt he owed you?

THE WITNESS: I gave Mr. Segal $5,000 of those funds and I kept $5,000.

Q I show you Government Exhibit 26A for identification and ask if you can identify that.

A Yes, I can.

Q Is that your signature on the back?

A Yes, it is.

MR. SIFFERT: I offer it in evidence.

THE WITNESS: It is a promissory note.

MR. DOYLE: No objection.

THE COURT: Received.

xx (Government's Exhibit 26A received in evidence.)

Q Is this a copy of the promissory note that you took from the bank?

A Yes, it is.

Q And does that reflect that you pledged 2,000 shares of Pioneer stock as collateral for that loan?

A Yes, it does.

Q I show you Government Exhibit 25D for identification and ask if you can identify this.

A That is a hypothecation agreement, hypothecating the shares of stock as collateral for the loan. That is the signature of Francine Zahl.

Q Do you know who Francine Zahl is?

A Francine Zahl was the secretary to Mr. Segal.

MR. SIFFERT: I offer this in evidence.

MR. DOYLE: No objection.

THE COURT: Received.

xx (Government's Exhibit 25D received in evidence.)

Q Could you explain to the jury what a hypothecation agreement is?

A It is the act of pledging the collateral to the

lender so that he can sell it and have a loan if the loan is not paid off.

Q Did there come a time that additional collateral was put up for that loan from First Israel?

A Yes, there did.

Q Do you recall what that collateral was?

A It was 1,000 shares of Selest or Select Enterprises.

Q Returning back to the original 2,000 shares of Pioneer stock, I show you Government Exhibit 26B for identification and ask if these are the shares.

A I would say these are the shares.

MR. SIFFERT: I offer them in evidence.

MR. DOYLE: No objection.

xx (Government's Exhibit 26B received in evidence.)

Q Could you explain the circumstances for putting up additional collateral for the loan, the original loan of $10,000?

A The Pioneer stock or the value of this Pioneer stock had gone down considerably and couldn't support the loan, and I received a call from the bank to that effect.

Q Do you recall how long after the original loan was made that this call was made to you from the bank?

A I can't recall that. It might have been a month, six weeks. I have no idea.

Q It was about a month or six weeks?

A I have no idea. I am guessing.

Q I show you Government Exhibit 25A for identification, on the back. I ask if that refreshes your recollection?

A Yes, that would be three months.

Q So it was about three months. Did you call Mr. Segal to tell him this?

A Yes.

Q And what did Mr. Segal do?

A Mr. Segal told me that he would try to take care of that and he ultimately gave me the Select stock to add to the collateral to support the loan.

Q And do you recall how much the Select stock was valued at, that 1,000 shares of Select?

A Somewhere around $15, I think.

Q Now, how much did Mr. Segal at that point owe you in total?

A $15,000.

Q $15,000; does that include the $5,000 that you gave him?

A That included the 5,000, that's right.

Q Prior to --

A It was ten. Prior to my taking the loan, he owed me ten. As a result of a loan in which I gave him another 5,000, he owed me fifteen.

Q I show you Government's Exhibit 3515 for identification and ask if this refreshes your recollection.

A Yes.

Q Is it your testimony now that at the time that you procured a loan from First Israeli Bank that he owed you $15,000 and that you went to the First Israeli Bank, borrowed $10,000, gave $5000 to Segal, and that he owed you $20,000?

A No, that is not so.

Q Did Mr. Segal ever pay back any of the $15,000 that he owed you?

A No, not of that 15; he did pay me back prior to that a sum of money that brought it down to the original 10,000 that I mentioned to you.

Q With respect to the 10,000 loan from the First Iraeli Bank, did Mr. Segal ever pay any of that back?

A No.

Q Did you pay that back?

A Yes.

Q Could you explain to the jury how you paid that back? In what amounts? When? Approximately?

A Well, it was a commercial type loan supported by collateral and periodically I would pay back $500 or $1000 until it came down to a sum of about $4000, I think

it was, at which time I took a personal loan payable over a period of three years and paid off the commercial loan. It was a different form of loan. It was a different form of loan. At that point the collateral was released and I paid off the personal loan in full.

Q You received back the original collateral?

A Yes.

MR. SIFFERENT: No further questions.

MR. DOYLE: With the Court's permission Mr. Heffernan will cross-examine this witness.

Thank you, your Honor.

CROSS EXAMINATION

XX BY MR. HEFFERNAN:

Q My name is James Heffernan and I represent Alan Segal.

At the time these 2000 shares of Pioneer you had many prior business transactions with Mr. Segal?

A I said so.

Q You were, in fact, a friend of his at that time?

A Yes, I would say so.

Q You are still a friend of his .ow?

A I have nothing against him other than the fact that he might owe me some money.

Q You never brought a lawsuit on that?

A No, sir, I did not.

Q You are also an attorney?

A Yes, I am.

Q And a CPA?

A Yes.

Q How many years have you been a member of the bar?

A About 17 or 18.

Q How many years have you been a CPA?

A About the same amount.

Q How many years of education did you have to become a CPA?

A Four years.

Q How many financial statements would you estimate that you have seen in these years you have been a CPA?

MR. SIFFERT: Objection. Relevance.

THE COURT: Overruled.

Q How many was that?

A Many.

Q Thousands?

A Yes.

Q How long did you look at this balance sheet that Mr. Segal showed you?

A Just glanced at it. I looked at it perhaps

a minute or two as I recall it.

Q You didn't take it seriously. sir, as a financial statement?

A No, I did not.

MR. HEFFERNAN: Thank you very much.

No further questions.

MR. KIRSCHNER: No questions.

MR. PAPE: No questions.

MR. WINOGRAD: No questions.

THE COURT: You are excused.

(Witness excused.)

MR. WALKER: The Government calls Francine Zahl.

- -

F R A N C I N E Z A H L , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q What is your present name?

A Francine Burach.

Q What was your maiden name?

A Gale.

Q Was your first husband's name Burach?

A Yes.

Q Then were you divorced from him and then did you marry another man by the name of Zahl?

A Yes.

Q Directing your attention to June of 1969 or thereabouts did you commence working for Alan Segal at that time?

A Yes.

Q What was your name at that time?

A Francine Zahl.

Q How long did you work for Mr. Segal starting in June of 1969?

A A year.

Q What was Mr. Segal's business during that year?

What did he do?

A Stocks, buying and selling stocks.

Q Did you observe him buying and selling stocks?

A Yes.

Q What did you observe him do?

A Well, he would buy stocks and sell them.

Q Was this over the telephone?

A Yes.

Q What was your role in connection with the buying and selling of these stocks?

A I was his nominee.

Q Did you carry out instructions of Mr. Segal?

A Yes.

Q What do you mean by nominee, the word nominee?

A Well, that to be means that he asked if he could buy some stocks in my name.

Q Were those stocks be owned by you? Would they be your stocks?

A No.

Q Whose stocks would they be?

A Mr. Segal's.

Q Did you ever purchase stocks on his instructions?

A Yes.

Q Did you ever purchase stocks without his instruc-

tions?

A No.

Q Were checks made out to you in your name?

A Yes.

Q Were these in respect to the sale of stocks?

A Yes.

Q What was done with these checks after you received them?

A I endorsed them and gave them to Mr. Segal or deposited them in the account of the corporation.

Q What corporation account did you deposit them in?

A Bona Fide Productions.

Q Were you an officer of that firm?

A Yes.

Q Would you tell us the circumstances under which you became an officer?

A Well, Mr. Segal said that he was going to form a new corporation and I was going to be the secretary-treasurer.

Q Who were the other officers?

A Gary Torres, who was the vice-president.

Q Who is Gary Torres?

A He also worked for our firm.

Q What did he do?

A He was the chauffeur.

Q Do you know what kind of a car he drove in 1969?

MR. DOYLE: Objection, your Honor.

THE COURT: Sustained.

Q Whose chauffeur was he?

A Mr. Segal's.

Q Do you know what kind of a car Mr. Segal owned in 1969?

MR. DOYLE: Objection, your Honor.

THE COURT: I don't see its relevance.

Q Do you recall, Mrs. Zahl, a stock by the name of Pioneer Development Corporation?

A Yes.

Q Did you have a conversation with Mr. Segal concerning Pioneer Development?

A I really don't remember any particular conversation.

Q Would you tell us what you recall about Pioneer Development stock?

A Just that I had a lot of shares of stock in my name.

Q Can you tell us if you recall the circumstances

under which you saw these shares?

A Mr. Segal showed me them one day.

MR. DOYLE: I didn't hear.

THE COURT: Mr. Segal showed them to her one day.

Q Mrs. Zahl, do you recall how these shares were shown to you? How they were physically shown to you?

A It was in a box.

Q How many shares did you see approximately?

A It was a lot of shares. I don't know how many there were.

Q Can you show us by demonstrating with your hands about how high the pile was?

(The witness indicates.)

MR. WALKER: May the record reflect a pile of approximately 10 inches.

THE COURT: 8 to 10 inches.

Q Where were the offices at that time?

A I believe they were at 150 61st Street.

Q Was that near a bar which was a frequent visiting place by Mr. Segal?

A Yes.

Q What was the name of that bar?

A P. J. Moriarty's.

Q Could you describe these offices?

MR. DOYLE: Objection, your Honor.

THE COURT: Sustained.

Q Were you always in those offices when you worked for Mr. Segal?

A No.

Q What other offices did you occupy?

A We moved to 150 East 58th Street.

Q Approximately when during the year that you worked for Mr. Segal did you move to these new offices?

A When during the year?

Q Yes.

A About eight or nine months, ten months after I started working for him.

Q With respect to the corporation or company of Bona Fide Productions, did you personally receive any of the profits or proceeds of Bona Fide Productions?

A No.

Q Was Mr. Segal on any of the documents of Bona Fide Productions as an officer?

A No.

Q Did you open a bank account for Bona Fide Productions?

A Yes.

Q I show you Government's Exhibit 40 for identi-

fication and ask if you can identify that?

A Yes.

Q What is that document?

A It looks like the opening of a new account. I don't recall seeing that paper before.

Q Let me show you Government's Exhibit 40-A for identification.

Can you identify that?

A Yes.

Q What is it?

A It's a paper to open an account.

Q Are these signature cards?

A Yes.

Q Does your signature appear on any of these documents?

A Yes.

Q This is a copy of two signature cards? Is that correct?

A Yes.

Q Would you point out your signature?

A Here and here.

Q Pointing to the top signature?

A Yes.

Q And the bottom signature?

A Right.

MR. WALKER: I offer these.

MR. DOYLE: No objection.

(Government's Exhibit 40-A was received in evidence.)

xx Q With respect to the Bona Fide bank account, was that bank account at the Republic National Bank?

A Yes.

Q Would you draw checks on that account during the time that you worked for Mr. Segal?

A Yes.

Q Was that always pursuant to his instructions?

A Yes.

Q Would you make deposits in that account pursuant to the instructions of Mr. Segal?

A Yes.

Q Do you know the name Kelli, Jackson & Scott?

A Yes.

Q What was Kelli, Jackson & Scott?

A As far as I know it was a corporation.

Q Do you know who was the owner of the corporation?

A No.

Q Do you know whose corporation it was or who was associated with the corporation?

MR. DOYLE: We will stipulate that Mr. Segal was the owner of the corporation.

MR. WALKER: Very well.

Q Mrs. Zahl, do you recall a time when with respect to Pioneer the certificates came or when you saw the box of certificates did you ask Mr. Segal whether the stock would be put in your name or not?

A It was already in my name.

Q I withdraw the question. I asked it improperly. Did Mr. Segal ask you whether the stock could be put in your name?

A He asked if he could put some shares in my name.

Q Did you have a conversation with him when the stock came about that?

A I said, "That's a lot of stock."

Q Did you ever discuss with Mr. Segal why he didn't want to put the stock in his own name?

A No.

Q Did you deliver, make deliveries of any of this stock at Mr. Segal's request?

A Yes.

Q Do you recall where you made these deliveries?

A Yes.

Q Where?

A To Karen & Company and Orvis & Company, and that is all I can remember.

Q Did you ever deliver stock to the bank, to the Republic Bank?

A Yes, to the bank.

Q What was your salary during this period of time?

A I believed I started off making $175 a week and then I got an increase, I was making $200 a week.

Q Did you ever receive any additional money in addition to your salary from Mr. Segal?

A No.

Q Did you ever receive any stock in addition to your salary from Mr. Segal?

A No.

Q Do you recall during a time when Pioneer stock was being traded in the market making telephone calls at Mr. Segal's instructions?

A Yes.

Q What did you do?

A I called whoever he asked me to call to buy or to sell.

Q Do you recall any instances when he would call either directly or indirectly and tell people to buy and

sell in your name?

A Yes.

Q Do you recall any of the individuals you spoke to at Karen & Company?

A It's a long time ago.

Q Let me show you this to refresh your recollection, Mrs. Zahl.

A Mr. Azzerone.

Q Do you recall how often you would speak to him?

A No, I don't.

Q I show you 100-A in evidence.

Can you identify your signature on that document?

A Yes, that is my signature.

Q You say that you were a nominee for Mr. Segal?

A Yes.

Q Do you know of any other nominees for Mr. Segal?

A Yes.

Q Would you name them?

A Florence Glans.

Q Who is Florence Glans?

A I believe it is Mr. Segal's mother-in-law.

Q Can you think of anyone else?

A Jeffrey Howard.

Q Who is Jeffrey Howard?

A His son.

MR. NEWMAN: May the record indicate that Mr. Finkelstein is not Mr. Segal's son.

Q Did you know anyone from Orvis Brothers?

A Mr. Kostos.

Q Do you know his first name?

A Gus.

Q Where did you see Mr. Kostos?

MR. DOYLE: Just to clarify, this is not in connection with your question about nominees, but a new line of inquiry?

MR. WALKER: Yes.

MR. DOYLE: Thank you.

A I saw Mr. Kostos at Orvis & Company and also at our office.

Q Did you speak to Mr. Kostos at that time on the phone on any occasion?

A Yes.

Q Do you know if Mr. Segal spoke to Mr. Kostos on the phone?

A Yes.

Q Do you know what Mr. Kostos' position was?

A I think he was a broker.

Q Did you know an individual by the name of Mike

Gardner?

A Yes.

Q Who is Mike Gardner?

A As far as I know, he had a securities company that went out of business.

Q Did you ever see him in your office?

A Yes.

Q How often? Infrequently or frequently or how often?

A For a short time frequently, for a short space of time.

MR. DOYLE: Can we get some idea of what that means in terms of days or weeks or months?

THE WITNESS: It was not like the whole year. Maybe a couple of weeks.

Q Would he use the facilities in his office when he came up?

MR. NEWMAN: Objection. Leading and suggestive.

THE COURT: Yes.

What did he do when he came to the office?

MR. KIRSCHNER: May we have some time parameter as to when these weeks were?

Q Can you recall approximately when Mr. Gardner used the office?

A Well, it was before we moved to the new office. I started working for Mr. Segal in June. I would say it was about seven or eight months after that, I think. This is five years ago.

Q Do you recall what Mr. Gardner was doing in the office?

A Well, to me he just talked a lot and he didn't talk about anything in particular. He used to like to speak in privacy.

Q Excuse me?

A He used to like to speak in privacy.

Q In those instances what would happen?

A Well, I would be sent out.

Q Who would send you out?

A Mr. Segal.

Q What would you do then in those instances?

A I would go to eat something or go shopping or something like that.

Q Were those instances when Mr. Segal and Mr. Gardner were alone or were talking?

A Well, sometimes. Sometimes I would be there.

Q Did Mr. Segal travel during this period of time?

A Yes.

Q Can you tell us how often he would travel?

A Very often.

Q Do you know where he went? What places he went to?

A All over the country.

Q Mrs. Zahl, I show you Government's Exhibit 46 for identification, 46-A for identification, 47 for identification, 47-A for identification and 48 for identification.

I ask you if you can identify your signature on any of these documents?

A Yes, they are all my signatures, except for this one.

Q Whose signature is on that?

A Alan Segal.

THE COURT: Referring to.--

MR. WALKER: To 48 it is Mr. Segal's signature?

A Yes.

Q But on 46, 46-A, 47, 47-A, that is your signature?

A Yes, it is.

Q Do you recall signing these letters?

A Yes.

Q At whose instructions did you sign these letters?

A Mr. Segal.

MR. WALKER: I offer these documents.

MR. KIRSCHNER: May I see them?

No objection, your Honor.

THE COURT: Received.

(Government's Exhibits 46, 46-A, 47 and 47-A were received in evidence.)

xx Q Mrs. Zahl, I show you Government's Exhibit 45 and ask you if that is your signature as well?

A Yes, it is.

Q I show you Government's Exhibit 52, 53, 53-A, 54, 54-A and 48 and ask if you can identify the signature on those documents?

A Yes, they are Mr. Segal's.

MR. WALKER: I offer all of these documents.

MR. GREENBERG: May we see them?

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibits 45, 48, 52, 53, 53-A, 54, 54-A were received in evidence.)

xx Q Mrs. Zahl, I show you Government's Exhibit 109 for identification and ask you if you can identify this document?

A Yes.

Q What is that?

A It is a check from Orvis Brothers.

Q Is it payable to you?

A Yes.

Q Is it endorsed on the back?

A Yes.

Q Did you actually yourself receive any of the proceeds of this check?

A No.

MR. WALKER: I offer it.

MR. DOYLE: No objection.

(Government's Exhibit 109 was received in evidence.)

xx

Q I show you Government's Exhibits 41, 42, 43, 50 for identification.

Can you identify these documents?

A Yes.

Q What are they?

A Well, these are deposit slips.

Q You identify all of these, 41 for identification, 42 for identification, 43 for identification, 50 for identification as deposit slips?

A Yes.

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MR. WALKER: I offer these documents.

MR. DOYLE: What are they?

MR. WALKER: Bonafide Productions and Alan Segal at the Republic National Bank.

MR. DOYLE: No objection.

(Government's Exhibits 41, 42, 43 and 50 received in evidence.)

xx

MR. WALKER: Your Honor, I have also two account statements, Government's Exhibit 44 for identification, being the account statement of Bonafide Productions, Inc., 150 East 61st Street, New York, New York, at the Republic National Bank, and also Government Exhibit 51 for identification, being an account statement in the name of Alan Segal, 150 East 61st Street, New York, New York, at Republic National Bank of New York, and I would offer these at this time.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibits 44 and 51 received in evidence.)

xx

MR. WALKER: I have no further questions.

CROSS EXAMINATION

BY MR. DOYLE:

Q Good morning. Is your present name Mrs. Burach?

A That's the name I go under.

Q Mrs. Burach, when you testified on direct examination about telephone conversations with a Mr. Azzerone, do you remember the questions that Mr. Walker asked you about that and the answers that you gave?

A Somewhat.

Q Do you remember whether at any time you had any conversations with Mr. Azzerone in which you gave instructions about bid or asked prices to be put in the pink sheets?

A No, I never did.

Q You never did?

A No.

Q Now, you testified about Jeffrey Howard?

A Yes.

Q Being Mr. Segal's son. Is that a stage name?

A Yes.

Q And was he an actor?

A Yes.

Q A Broadway actor?

A He was in the movies

Q He was in the movies. Thank you. Now, at any time during all of the events that you have described, did Mr. Segal ever tell you to cover up or keep secret

any of these facts that you have testified about?

A He did not.

Q And during all the time that you worked for Mr. Segal did you have a very high opinion of him as a person?

MR. WALKER: Objection.

THE COURT: Sustained.

MR. DOYLE: That is all, your Honor. Thank you.

MR. NEWMAN: No questions.

MR. WINOGRAD: No questions.

MR. KIRSCHNER: Just one question, your Honor.

CROSS EXAMINATION

BY MR. KIRSCHNER:

Q Do you recall being asked on direct examination who Mr. Michael Gardner was?

A Yes.

Q How would you characterize Mr. Gardner?

MR. WALKER: Objection. How would you characterize him.

THE COURT: Sustained.

MR. KIRSCHNER: I have no further questions.

THE COURT: The form of the question.

You are excused.

MR. GREENBERG: Your Honor, may this witness be excused subject to recall? I anticipated testimony may be

necessary when another witness is called.

THE COURT: All right, subject to recall.

MR. WALKER: Could I see your Honor at side bar on that?

THE COURT: We will take our morning recess at this point.

(Jury left the courtroom.)

(Witness excused.)

THE COURT: All right, Mr. Walker, what is your problem?

MR. WALKER: Your Honor, there are two problems really that I want to be very candid with the Court. One is that this trial has proceeded much, more more quickly than I anticipated, and quite frankly, the government, although we are arranging to get our witnesses in here, I am not sure that we will be able to fill up the full day.

THE COURT: We are not waiting for witnesses. If you run out of witnesses you run out of witnesses. I told you that months ago. Have your witnesses here. No.

MR. WALKER: Your Honor, there is one other thing about this witness here. I will make every effort I can to see that the witnesses are here, but I frankly did not anticipate the speed--

THE COURT: I told you to have your witnesses in court.

I told you we would move fast. I do move fast. It's certainly no secret.

MR. WALKER: Yes, your Honor. It is just a question of judgment, and I erred on that score.

THE COURT: Well, I told you. I am not waiting if they are not here. That's it.

(Recess.)

(Jury present.)

MR. WALKER: Mr. Knigge.

D W A I N K N I G G E, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Knigge, how are you presently employed, sir?

A I have a transfer agency, stock transfer.

Q Where is that located?

A Salt Lake City.

Q And directing your attention to 1969, in the fall of 1969, how were you employed?

A I was employed by Nevada Agency and Trust Company.

Q In what capacity?

A I was working in the stock transfer department there.

Q Would you tell us, tell the jury what a stock

transfer agency does.

A Yes. A stock transfer agency represents a corporation as its agent to transfer stock for the corporation from one owner to another owner, as it may be presented for transfer.

Q Would you describe, sir, the procedure that is followed when stock is transferred on the books of a corporation?

A The method of what I do as a transfer agent?

Q Yes.

A Okay. As a transfer agent, of course, we receive the stock normally by mail. Sometimes it is walked in by the individual, but the normal course it is received in the mail, pick up the mail, open the envelope, take out the stock certificates that may be in there, and normally attached to those stock certificates you will find the transfer instructions. We log the certificates or date the certificates in; then proceed with the transfer of the stock, examining the stock to see that it is in good delivery form, to see that it is outstanding on the corporation's records, to determine if there is a stock transfer against it.

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If none of these things exist and there is no legend on the face of the certificate, then we will effect transfer as the broker has directed that we so do.

Q Now, if you are given transfer instructions, are you obligated to fulfill those instructions?

A Yes, as long as the stock comes to you in good delivery form and no stock transfers are existing.

Q Do you make any determination when a certificate comes in as to whether or not the Securities Exchange Laws are being complied with; is that your function?

A Well, I am not an attorney and consequently I can't determine the legal opinion with respect to that, but there are certain functions of the Securities and Exchange Rules and Regulations which we do follow; specifically, if a stock certificate bears no legend on the face of it, it comes in to us and our records are not marked as a controlling person, for example, an officer of the corporation, then, of course, we would effect transfer.

I don't know if that answers your question.

Q What do you do with cancelled certificates once they are cancelled?

A The cancelled certificate is affixed to the back of one copy of the transmittal letter and retained in the files of the transfer agent.

Q Now, sir, every time a stock is sold, is there necessarily a transfer on the books of the corporation?

A No, that would not be a regulation that the broker

would have to follow. He wouldn't have to send it in. It could be transferred from one person to another and they refer to that as street stock.

Q But is it fair to state, sir, that if a person desires to have the name on the certificate changed to record the owner of that certificate, that that individual would then send the stock, the old share in for transfer, and cancellation, and that a new share would then be issued?

A That's correct.

Q Now, what was your practice at the Nevada Agency and Trust in 1949 in connection with effecting transfers of stock in terms of the time within which you would act?

A Our normal transactions were, or transactions in the normal course of business were normally handled within a period of approximately 48 hours.

Q Do you recall the trading or the transactions in a stock called Pioneer Development Corporation?

A Pioneer Development Corporation was one of the companies we represented as transfer agent.

Q In connection with your representation of Pioneer Development Corporation did you ever give any opinion that Pioneer Development Corporation stock was free trading stock?

A The term "free trading," no, sir.

Q Essentially, if someone called up and wanted to ask you whether or not the stock could be transferred, what opinion would you give?

MR. DOYLE: Objection to the hypothetical question, your Honor.

THE COURT: Sustained.

MR. WALKER: Very well.

Q Now, would you tell us, sir, with respect to every corporation with which the Nevada Agency and Trust worked as a representative transfer agent, what records you kept inrespect to that corporation?

A You mean strictly with respect to the transfer?

Q Yes.

A With respect to the transfers of the corporation, you keep for the corporation all of the unissued certificates that you have in possession; you do keep a complete record of each shareholder. We had, as a result of the method of filing the cancelled certificates to transmittals, we had a numeric listing of the stock for the corporation and then alphabetical listing by ledger cards.

Q Mr. Knigge, I show you Government's Exhibit 1-A-1 in evidence, 1-A in evidence, 1-B in evidence, 1-C in evidence, 1-D, 1-E, 1-F, 1-G, 1-H, 1-I, 1-J, 1-K, 1-L, 1-M, 1-N, 1-O, 1-P, 1-Q, 1-R, 1-S, 1-T, 1-U, 1-V, 1-W and ask you if you can identify all of these documents?

A These documents appear to be the numeric listing of the certificates as they were issued with the canceled certificates affixed to the back of the transmittal letters.

MR. WALKER: I can represent that these documents have been extracted from a larger folder.

Q You have seen that folder in my office? Is that correct?

A That is correct.

Q And that was the complete trading, complete set of transfer records in the stock?

A Yes.

Q Were these records made in the ordinary course of the business?

MR. DOYLE: Your Honor, they are already in evidence. The competency problem has been served. I don't see any need for this.

THE COURT: I don't, either.

MR. WALKER: At this time the Government would offer the following documents which are not in evidence, 1-J,

1-L, 1-N, 1-O --

MR. DOYLE: Your Honor, to save time whatever transfer records there are we have no objection to going into evidence. We can do this later on and avoid any delay in the trial. There is no objection to the transfer records being received.

THE COURT: Received.

(Government's Exhibits 1-G, 1-L, 1-N, 1-O, 1-R, 1-F, 1-T, 1-U, 1-V, 1-W were received in evidence.)

xx Q Mr. Knigge, was it the practice of the Nevada Agency & Trust upon preparing a transfer of stock to keep a copy of the transmittal letter that accompanied it and to send the new shares out to the individual that were being transferred?

A You mean to keep a copy of the transmittal letter that they forwarded to us?

Q Yes, keep a copy of that?

A Yes, that is your transfer instructions and that would be attached along with the canceled certificates.

Q Would you then type out a transmittal letter and keep a copy of it, this pink sheet?

A Yes, that is our transmittal letter, the pink sheet. That is one copy of it.

Q Would you mail the original to the addressee?

A That is correct.

Q Was that practice followed in this case in connection with Pioneer Development?

A Yes.

Q Now I show you Government's Exhibit 1-G-1 in evidence and ask you if you can identify this document here?

A Yes, that document came in to us relative to this particular transfer.

Q Was that document received in the mail?

A Yes, that would have been received in the mail.

Q That is an undated letter and it is addressed to Nevada Agency & Trust, 2 Riland Street, attention Mr. Dwain Knigge -- and that is misspelled?

A That is correct.

Q Was this letter in connection with the transfer of a 30,000-share block of Pioneer Development Corporation which had been issued in the name of Francine Zolt to be reissued in the name of Francine Zahl?

A That is correct.

Q Also did the letter request that instead of having one 30,000-share block, that the --

MR. GREENBERG: I object to it. The documents speak for themselves.

THE COURT: Sustained.

Q I show you another document, Government's Exhibit 1-G-2 and ask you if you can identify this document?

A Yes, that is another letter related to this transfer.

Q Is that the letter dated October 29, 1969?

THE COURT: Sustained.

MR. WALKER: I offer this document in evidence.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibit 1-G-2 was received in evidence.)

xx Q With respect to 1-G-2, was that document received in the mails also?

A Yes.

Q Does that particular letter spell your name correctly?

A Yes, it does.

Q Now, sir, were there certain instances when stock was brought to you, physically brought to you by an individual as opposed to being sent in the mails?

A Yes, I believe there were.

Q Can you tell us or distinguish for us, sir the instances in which that was done?

A When an individual would walk into the office to exchange stock we used the yellow instruction form which would be filled out and signed by the individual. The stock would be transferred and then returned to him at that particular time.

Q Sir, I show you the following exhibits and ask you whether this stock was brought to you physically for transfer?

MR. DOYLE: Your Honor, we find out the relevance of this line of interrogation.

MR. WALKER: We have had one witness testify or two witnesses, Clegg and Acton as to certain steps they took, and this is being offered in support of their testimony.

MR. PAPE: It is cumulative.

THE COURT: Isn't this cumulative? I don't see any objections to the documents. The documents speak for themselves.

They are all in evidence, aren't they?

MR. WALKER: Your Honor can I speak to your Honor at the side bar on that, because I think it is significant.

(At the side bar.)

MR. WALKER: Your Honor, it is the Government's

position that the Government has an obligation to bolster the testimony of accomplice evidence in this case.

THE COURT: There is not any question that the documents are in evidence. That is my quarrel with what you are doing.

Do you want him to read the exhibits to us?

MR. WALKER: The extent to which the stock is physically brought in, brought in by foot and delivered personally as opposed to mailing it is relevant.

MR. DOYLE: He has testified they have yellow sheets attached to them. All we have to do is look at them.

THE COURT: To the extent that the documents are not self-explanatory, you can ask questions. But it seems to me you are just having him parrot the documentary evidence, and that we don't need.

MR. WALKER: Very well.

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(In open court.)

Q Mr. Knigge, did you know the individuals involved? Did you know Mike Clegg?

A I met Mr. Clegg and did know him, yes.

Q Did you know Mr. Acton?

A Yes.

Q Did you ever meet a Mr. Segal?

A I don't recall that I have met Mr. Segal personally.

Q How many corporations does the Nevada Agency & Trust represent or did at that time?

MR. DOYLE: Objection.

THE COURT: Sustained.

MR. WALKER: I have no further questions form this witness.

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CROSS EXAMINATION

XX BY MR. DOYLE:

Q Mr. Knigge, do you recall a Pioneer Development shareholders meeting being held in Reno on October 23, 1969?

A I don't recall the specifics of the meeting at this time.

Q Do you recall attending a meeting of Pioneer Development Corporation at or about that time?

A I do know that somewhere in 1969 there was a shareholders meeting called.

Q Was it held at the premises of your transfer agency?

A That is correct.

Q Did you attend the meeting?

A I believe that I attended that meeting, but I

have no recollection of my function or anything else at the meeting. I necessarily was in the office that day.

Q Give us your best recollection of who was present at that meeting?

A I am just blank about that particular thing.

Q Your recollection is almost a complete blank as to who was present?

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A Yes.

Q Do you recall whether Mr. Hayes Schaeffer was present?

A I don't know for sure that Mr. Schaeffer was present, no. I can't say.

Q Tell the jury who Mr. Hayes Schaeffer is?

A Mr. Hayes Schaeffer was at that particular time the owner of the Nevada Agency & Trust. I would not say he was the owner, he had a contract of sale at that time, but he had been the owner for some twenty years.

Q Do you know whether Mr. Clegg was at that meeting?

A I can't say for sure.

Q Do you know whether Mr. Acton was there?

A I can't say for certainty.

Q You can't recall whether you met Mr. Segal at all?

A Personally I cannot recall that I have. I may have talked to him on the telephone or something, but don't recall having met him.

MR. KIRSCHNER: During this pause may I inquire from Mr. Walker if Government's Exhibit 1-F has been admitted in evidence, one of the transfer records?

THE CLERK: Yes.

MR. DOYLE: No further questions.

MR. WALKER: Through an oversight we did not offer Government's Exhibit 1-X, wich we would like to offer at this time.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibit 1-X was received in evidence.)

THE COURT: Any other cross?

You are excused.

(Witness excused.)

MR. WALKER: We call Mr. Parris.

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G E O R G E T. P A R R I S, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q How are you presently employed?

A I am a business broker for myself.

Q Where do you reside?

A Richardson, Texas.

Q Directing your attention to 1969, how were you employed?

A The same way, business broker.

Q Where did you reside at that time?

A Tucson, Arizona.

Q Directing your attention, sir, to late October or early November of 1969 did you find yourself in Reno, Nevada, on a business trip?

A Yes, sir.

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T6 Q And specifically did there come a time when you met a man by the name of Anthony Scardino and Richard McKibbon?

A Yes, sir.

Q And would you tell us, sir, where that meeting occurred?

A At the Riverside Hotel.

Q And who was present aside from McKibbon and Scardino and yourself?

A I think Bob Clayton introduced me.

Q And who was Mr. Clayton?

A He was a friend that called me up to Aero.

Q Do you recall the conversation on that occasion, what was said?

A Well --

MR. NEWMAN: Objection. Hearsay, your Honor.

THE COURT: Sustained.

Q At the meeting, sir, who was present at the meeting?

A I think the three of us, yes.

Q You --

A Bob Clayton and Mr. McKibbon and Mr. Scardino.

Q The four of you?

A Yes.

Q Do you recall, sir, what was said at that meeting

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with Mr. Scardino and Mr. McKibbon present?

A No, I don't. I don't understand the question.

Q Do you recall, sir, what was said at that meeting?

MR. WALKER: Bear with me, your Honor.

A Oh, I think that --

MR. WALKER: Excuse me just a minute.

THE WITNESS: Yes.

MR. PAPE: If he is able to answer now without being prepared, your Honor, I think he should answer.

THE COURT: I don't know what counsel is doing. I'm not clairvoyant. I don't suppose you are, Mr. Pape although maybe Houston lawyers are.

Q Can you recall now, sir, what was said at that meeting?

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A Well, to the best of my memory they said that they had --

Q Can you specify who was speaking? Do you recall who was speaking?

A I think Mr. McKibbon.

Q Yes?

A I think he said to me that Mr. Scardino owned some stock that they wanted to sell and they did not have any brokers, either one of them.

Q Were the terms of the sale spelled out in any way?

A Well, they said they would, yes, discount the stock to me for cash.

Q What were you to do?

A Well, I was to buy their stock, but they couldn't produce their stock, they didn't have it.

Q And did you make a telephone call at that time?

A Yes, sir.

Q Where did you call?

A I called my broker in Reno or in Denver.

Q And who was that?

A Mr. John Parker.

Q And what was the telephone call; why did you call?

A To check on the stock, to see if it was on arrive, good stock, good company.

Q And did you get back a quote on the stock?

A It seems to me that he quoted a figure, yes.

Q Do you recall now what that figure was?

A Well, around $7 is all I can recall.

Q And what did you say? Did you then have a further conversation with Mr. Scardino and Mr. McKibbon?

A Well, the only conversation we had was, we were leaving Reno at the time, and if they had the stock, I could borrow the money from my banker and buy it, but other than that, that was all.

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Q But you were to buy the stock?

A Yes.

Q Was it ever discussed on that occasion that this stock would be put up for a loan of any kind?

A I had no money to loan them.

Q My question, sir, was, was there ever any suggestion that this stock was available only for a loan?

A No.

Q Did you have a further conversation with Mr. Scardino and Mr. McKibbon concerning where the stock was at that time?

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A No.

Q Did they have the stock with them?

A No.

Q Was anything said about that fact or what would be done in the future?

A I told them if they got the stock, to give me a ring and I'd buy it.

Q What did they say when you told them that?

A Well --

MR. PAPE: Your Honor, I object to the form of the question, what did "they" say. I want -

THE COURT: Sustained.

MR. PAPE: -- to know who "they" --

THE COURT: I heard the question.

Q What was said in response to your statement that you would buy the stock if they produced the certificate?

THE COURT: Sustained. Don't use the plural.

MR. WALKER: Very well.

Q What was said thereafter?

A Well, I think that was the end of the conversation. They didn't have the stock to sell so --

Q All right. Now, sir, what did you do following this conversation? Where did you go?

A Well, I went back to Tucson, my wife and I.

Q Directing your attention to the week of November 3rd or thereabouts, some time during that week, between the 3rd and the 7th of November, did you receive a telephone call on that occasion?

A From Mr. McKibbon, yes.

Q What did he say?

A He said Tony had the -- Mr. Scardino had the stock and if I could buy it, he would fly out to Tucson.

Q What did you do when you got that telephone call?

A I called my banker.

Q For what purpose?

A Well, I asked him if I could borrow enough money from him to buy the stock.

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Q You were going to borrow the money so you could buy the stock?

A Yes, sir.

Q And what did he say?

A He said that if the stock was sold and a duebill sent to him at the bank and the check sent to him at the bank, he would loan me the money.

Q Once you received that information, did you make a return telephone call to anyone?

A I think I told him this, yes.

Q Who?

A Well, Mr. McKibbon was the one I was talking with.

Q And what did you tell Mr. McKibbon at that time?

A Well, that I would buy the stock if they would bring it to Tucson.

THE COURT: You say "they." Who?

THE WITNESS: Mr. McKibbon, Mr. Scardino.

Q Specifically directing your attention next to November 7th, a Friday, did you meet with someone on that occasion?

A Yes, sir.

Q Who did you meet with?

A Mr. Scardino.

Q And where did you meet with him?

A At the bank. We went to the bank.

Q And did you have a conversation with him at that time?

A Yes, sir.

Q And what was the conversation? Who was present?

A Well, the banker, Mr. Hinkel, Harvey Hinkel, the vice chairman of the board of the bank.

Q And anyone else?

A Mr. Scardino and I.

Q What was the conversation at that time?

A Sure thing, that he would loan me the money to buy the stock, if, you know, it could be sold.

Q That was Mr. Hinkel would loan you the money, the banker would loan you the money to purchase the stock from Mr. Scardino?

A Yes.

Q Was anything further said at that meeting?

A Well, I think that we called Mr. Parker and it was too late to get anything done that way.

Q Did Mr. Scardino have anything in his possession?

A Well, he had the stock, yes.

Q I show you Government Exhibit 1A and ask you if you can identify this document?

A No, I never saw that.

Q Can you identify this document?

A Yes. Well, let's see. Yes.

Q The certificate attached to 1K, can you identify that document?

A Yes.

Q What is it?

A Well, it's a stock certificate.

Q Is that the certificate, sir, that Mr. Scardino brought to you on that day, November 7, 1969?

A Yes.

Q And can you recognize it, sir, because it has some of your writing on it?

A Yes, sir.

Q Directing your attention to the back of the certificate, at the top of the inscription portion does it bear your signature and is it subsequently crossed out?

A Printed.

Q Printed?

A Yes.

Q Did you print that on there?

A Yes.

Q And is it signed, sir?

A Yes, sir.

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Q And do you recall, sir, whether that was signed in your presence?

A I believe. I can't remember but -- I can't remember.

Q Do you recall whether it was signed prior to your seeing the certificate?

A No, I can't.

Q And does this portion of the certificate bear the date November 7, 1969?

A Yes, sir.

MR. PAPE: Your Honor, the certificate speaks for itself as to dates.

THE COURT: Sustained.

Q Now, when it was determined that it was too late in the day, what happened?

A Well, we made an agreement to meet in Denver.

MR. PAPE: I'd like to know who "we" is, if your Honor please.

THE WITNESS: Well, I did not know at that time.

THE COURT: Who did you make the agreement with?

THE WITNESS: Mr. Scardino.

Q And what was the conversation on that subject?

A Well, after talking with Mr. Parker, he suggested we just --

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MR. PAPE: Objection as to hearsay.

THE COURT: Sustained. You can't tell us about that.

Q What was the conversation that you had with Mr. Scardino in Tucson on November 7th at that time?

A Well, we would just meet in Denver and I would take the stock to my broker and sell it and pay him for it.

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Q What was done with the certificate at that time?

A Well, to the best of my memory, why, Mr. Scardino took it back.

Q And then, directing your attention to that weekend did you receive a telephone call that weekend?

A Yes.

Q And from whom?

A Mr. McKibbon, I believe.

Q And what was the conversation at that time?

A Well, that he would meet me in Denver, Monday morning, and we would go to the stockbroker and sell the stock.

Q Sir, directing your attention to November 10, 1969, what did you do on that day, that Monday?

A Well, I flew in to Reno -- I'm sorry -- into Denver, arriving about 30 minutes before Mr. McKibbon, and waited for him to come in.

Q And where did you wait?

A At the airport.

Q And then what happened?

A Well, when he came in, we went to Hornblower Weeks' office and got with Mr. Parker and made arrangements to sell the stock, provided we'd get paid that day.

Q Specifically, sir, did you see the certificate on that day?

A Yes.

Q And what certificate was it?

A The same one you showed me, as far as I know.

Q And what did you do with the certificate at Hornblower Weeks?

A Well, turned it over to Mr. Parker.

Q And then what happened?

A Well, he went to the manager of the office and asked that we be paid that day, at that moment, after it was sold.

Q And did you receive a check at that time?

A Yes, sir.

Q And what was done with that check?

A Well, Mr. McKibbon and I went down to the bank below, because it was drawn on the same bank that the office of Hornblower Weeks was in, and cashed the check and got a cashier's check to Mr. McKibbon, because this was prior

agreed or by Mr. Scardino and Mr. McKibbon.

Q Now, I show you, sir, Government Exhibit 21A in evidence and ask you if you can identify that document?

A Yes.

Q What is it?

A That is the check they paid us with.

Q Does that document bear your signature on the back?

A Yes, sir.

Q Now, I show you Government Exhibit 22A in evidence and ask you if you can identify that?

MR. PAPE: Objection, your Honor, only because these are already in evidence. They have been admitted through Mr. Parker.

THE COURT: Sustained.

MR. WALKER: I think if the witness saw them he should be able to identify them, your Honor.

THE COURT: They are already in evidence. Ask him if he saw the document.

Q Did you see this document?

A Yes, sir.

Q And with respect to 22B, did you see that document?

A Yes, sir.

MR. WALKER: May I briefly explain these to the

jury, your Honor?

THE COURT: Surely.

MR. WALKER: Government Exhibit 21A is a check drawn on Hornblower Weeks Hemphill Noyes, Denver, Colorado, pay to the order of George T. Parris, dated November 11, 1969, in the amount of $36,459.50, signed on the back George Parris.

Government Exhibit 22A is a cashier's check drawn on the American National Bank in Denver, Colorado, payable to Richard McKibbon in the amount of $32,350, and it also contains a purchase order form, a registered copy at the bottom, bearing a signature.

Q Is this your signature, sir?

A Yes.

MR. WALKER: Government Exhibit 22B is a credit advice from the American National Bank, dated November 10, 1969, stating, "We today credit your account per our wire advice this date for transfer of funds to Union Bank, Tucson, Arizona, attention Harvey Hinkel, for the credit and advice of George T. Parris, account number 305932-7."

Q Mr. Parris, with regard to the proceeds of the Hornblower check, we have the check and the credit advice. Was there any additional money left over?

A Yes, sir.

Q How much was the additional money? Approximately 4--

A Pardon me?

Q Was it approximately $459?

MR. PAPE: I object to leading the witness.

THE COURT: Sustained.

MR. WALKER: I think it is a question of mathematics, your Honor.

MR. PAPE: I will withdraw my objection to save time, your Honor, if he needs to refresh him.

Q Was that amount left over $459.53?

A I can't recall the exact amount, but that sounds reasonable.

Q And what was done with that money?

A Mr. McKibbon and I split the money for our travel expense reimbursement.

Q Now, sir, did you have any discussion at all at any time with Mr. Anthony Scardino that this would be a loan transaction?

A No.

MR. PAPE: Objection. That is repetitive, your Honor.

MR. WALKER: I was directing before his attention to a specific conversation.

THE COURT: Overruled.

Q Yes, sir?

A No, sir.

Q Did you have any discussion at any time with Mr. McKibbon that this would be a loan transaction?

A No, sir.

Q Did you have any discussion with Mr. Parker that this would be a loan transaction?

A No, sir.

Q Did you have a discussion with anyone else as to whether this would be a loan transaction or not?

A No, sir.

Q Sir, what was your understanding of this transaction?

A Well, it was just a straight out and out sale and buy.

Q I show you Government Exhibit 30A and ask you if you ever saw that document?

A Yes, that is what they brought to -- that's what Mr. McKibbon brought to Denver with him, to show it was a sale.

MR. WALKER: Your Honor, could I read this document to the jury?

THE COURT: Yes.

MR. PAPE: Is it in evidence, your Honor?

MR. WALKER: Yes, it is.

(Mr. Walker read from Government Exhibit 30A to the jury.)

Q Mr. Parris, I also show you Government Exhibit 29 for identification and ask you if you can identify that document?

A Yes.

Q What is it?

A It's a cashier's check.

Q Have you seen this document before?

A Yes.

MR. WALKER: I offer it.

MR. PAPE: No objection.

THE COURT: Received.

xx (Government's Exhibit 29 received in evidence.)

MR. WALKER: This is a check dated November 17, 1969, in the amount of $450. It is a cashier's check on the Union Bank of Tucscon, Arizona, pay to the order of Anthony J. Scardino, $450. And it is signed on the back, Anthony J. Scardino.

Q Would you tell us, sir, what the circumstances were of the issuance of this check to Mr. Scardino?

A Yes. Mr. McKibben called me and told me that

Mr. Scardino objected to us taking $150 for travel expenses and that I'd better send it back to him and which I did.

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Q Now, sir, I show you Government's Exhibit 2-A in evidence and ask you if you have seen this document before?

A Yes, I have seen that.

Q Is this the document you received from Hornblower, Weeks, an account statement?

A That is the one that I objected to because I knew nothing about that.

Q No, no.

A What are you talking about?

Q Does this reflect the 5000 shares which you sold?

A Yes, it does, yes. No, that is all right.

Q You received this document, sir, from Hornblower, Weeks? Is that correct?

A Yes, sir.

MR. WALKER: I have no further questions of this witness.

MR. DOYLE: I have no questions, your Honor.

MR. KIRSCHNER: No questions, your Honor.

MR. NEWMAN: No questions, your Honor.

XX CROSS EXAMINATION

BY MR. PAPE:

Q Mr. Parris, I think you said that your occupation

or employment is a business broker?

A Yes, sir.

Q Would you please tell the jury what a business broker does?

A Well, such as now a business broker is a man, the way I do, is any legitimate deal that is offered to me that I can broker it and make a profit, that is what I do.

Q What do you mean when you say you can "broker it"?

A Well, for instance --

THE COURT: I think the jury probably understands what a broker is.

Q In the fall of 1969 how long had you lived in Tucson?

A I think we moved there in August or September.

Q Of 1969?

A Yes.

Q So you had lived there only a brief while?

A Yes.

Q You testified that you met Mr. Scardino in the Riverside Hotel in Reno?

A Yes.

Q Do you remember about when the first time you met

him was?

A Well, I think about the first and only time was in the latter part of October or the first of November.

Q Do you know what Mr. Scardino was doing at the Riverside Hotel in Reno?

A Well, Bob told me that he was one of the owners of the Riverside.

Q That would be Bob Clayton?

A Yes.

Q How long had you known Bob Clayton at that time?

A A month or two.

Q Whom did Mr. Clayton introduced you to first? Richard McKibbon or Mr. Scardino?

A I believe Mr. McKibbon.

Q Do you remember the circumstances of that introduction?

A Well --

Q Do you remember where it took place?

A Sir?

Q Do you remember where it took place?

A In the Riverside Hotel, but I just remember Mr. Scardino as a huge man.

Q Mr. Scardino is right over here.

Would you stand up.

Is that Mr. Scardino?

A I believe so, yes, sir. He talks very little.

Q You say you believe so.

How many total times have you met Mr. Scardino in your life?

A Just once, I believe, as far as I can remember, yes.

Q That would be in Tucson?

A Well, I am very sorry, I met him in Reno and then met him in Tucson. That is the only two times. I have not seen him since.

Q You met Mr. McKibbon first?

A I believe so, yes, sir.

Q And Mr. Clayton introduced you to Mr. McKibbon? Is that right?

A Yes, sir.

Q Did you discuss anything concerning Pioneer Development stock with Mr. McKibbon when Mr. Clayton first introduced you to him?

A No.

Q Did you ever discuss buying an interest in the Riverside Hotel with Mr. Scardino?

A No.

Q Did you ever discuss that with Mr. McKibbon?

A No, sir.

Q It has been over five years, has it not, Mr. Parris?

A Yes. I couldn't buy anything like that, no, sir.

Q The time that you met Mr. Scardino in Tucson, who introduced you to Mr. Scardino? Mr. Clayton or Mr. McKibbon?

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A You're saying when I met him in Tucson?

Q No, when you met him in Reno, if you met him in Reno?

A I believe that Mr. McKibbon introduced me, yes, sir.

MR. PAPE: May I have 3530, the original?

THE COURT: If you have a copy, work with that.

Q Mr. Parris, when if you can remember did any agent of the Government first contact you about this stock deal?

A Oh, it must have been six or eight months later I got a call from New York.

Q But it would be back in 1970?

A Yes, sir.

Q Do you remember who contacted you?

A Well, it was just a telephone call and he said from the Securities and Exchange Commission. I think that is what he said.

Q Someone from the Securities and Exchange Commission?

A Yes.

Q Did you do anything in response to that contact?

A Well, he asked me to write him a letter and what happened and I did, yes, sir.

Q Do you think that your recollection of the events concerning this stock transaction was better back when you wrote that letter in 1970 than it is today?

A Well, I would say yes, sir. It was as well.

Q Would this be a copy of that letter?

A Yes, sir.

Q Is that an accurate copy of a letter you wrote to Mr. Ostrich at the SEC?

A Yes, sir.

Q Do you remember what Mr. Scardino's employment was at that time, Mr. Parris?

A I think he told me that he was a manager for a big department store in Houston.

Q At the Reno meeting do you remember who first told you, or at any Reno meeting do you remember who first

told you that Mr. Scardino had stock to sell?

A Mr. McKibbon, I believe.

Q Mr. McKibbon and not Mr. Scardino?

A Yes. If I may say, I don't think Mr. Scardino talks very much.

Q You don't think Mr. Scardino talks very much?

A Yes.

Q Would it be a fair statement to say you dealt mostly with Mr. McKibbon?

MR. WALKER: I move to strike as being conclusory.

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THE COURT: Overruled.

Q Would it be a fair statement that you dealt mostly with Mr. McKibbon?

A I would believe that would be fair, yes, sir.

Q As a matter of fact, after you returned to Tucson from Reno wasn't it Mr. McKibbon that called you and said they did have a stock certificate?

A I believe that is true.

Q And then Mr. Scardino did bring a certificate up to Tucson? Is that right?

A Yes.

Q You described a meeting that took place in Tucson on November 7, 1969, at which were present you, Mr. Scardino

and your banker? Is that right?

A Yes, sir.

Q Mr. Scardino had a certificate at that time? Is that correct?

A Yes, sir.

Q But no actual transfer of that certificate was made at that time?

A No.

Q How long would you say the conversation took place at which were present you, Mr. Scardino and the banker?

A Five or ten minutes.

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Q Five or ten minutes?

A A short time. It is too far back to remember.

Q During that meeting and that conversation wasn't most ofthe conversation concerning you borrowing money from the banker?

A To purchase the stock.

Q But wasn't it mostly concerned with your borrowing money from that banker?

A Well, I was borrowing the money to purchase the stock. That is all.

Q Just please answer the question.

Isn't so that most of that conversation was with with the banker?

A I would believe that was right, yes.

Q At that time after no transfer of the certificate was achieved, when Mr. Scardino was in Tucson didn't you testify that he took the certificate back with him?

A To the best of my memory he did.

Q And the letter that you testified Mr. McKibbon brought to Denver that says, "I sold you the stock," that letter was not there in Tucson?

A No.

Q After you found out that you could arrange the money to buy that stock whom did you call, if you remember? Did you call Mr. Scardino or did you call Mr. McKibbon?

A I don't quite understand the question.

THE COURT: How long do you think you will be?

MR. PAPE: It will be short. I am almost finished.

THE WITNESS: I just can't recall, but I think it was Mr. McKibbon

Q If I may refresh your memory, would you please review this final paragraph on the first page of your letter of 1970 to the Securities and Exchange Commission?

A Oh, yes.

MR. PAPE: Your Honor, at this time I would offer

that in evidence, this letter.

Q This is a true and accurate copy of the letter you sent the SEC?

A Yes.

MR. WALKER: Your Honor, I think the witness has testified to everything here. There is no need to receive the letter.

THE COURT: Let me see the letter.

MR. WALKER: Very well.

THE COURT: I take it your objection is that it is cumulative?

MR. WALKER: Yes.

THE COURT: Overruled.

(Defendant Scardino's Exhibit A was received in evidence.)

xx Q Now, having reviewed that do you remember what you did after Mr. Scardino took the certificate back?

A Oh, yes, I called Mr. McKibbon and told him that we would have to conclude the meeting in Denver.

Q You called Mr. McKibbon and canceled the meeting?

A Yes.

Q You didn't call Mr. Scardino?

A Yes.

Q Had you called your broker at that time to check

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the validity of the stock?

A Yes.

Q You testified that you met Mr. McGibbon in Denver?

A Yes, sir.

Q May I ask you why you had a brokerage firm in Denver as opposed to Tucson? Had you lived in Denver before?

A No.

Q Aren't there brokerage firms in Tucson where you lived?

A Yes, but I was recommended to this brokerage by one of my associates in Tucson. I believe his name was Stuart Burnham, but he is dead.

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Q Mr. Burnham is dead now?

A Yes.

Q Did he recommend you to Hornblower & Weeks or did he recommend you to a specific broker in Denver?

A Well, Hornblower & Weeks. Mr. Parker, yes.

Q May I ask what your relationship was with Mr. Parker that would cause you to do business all the way in Denver rather than with a brokerage firm in Tucson?

A Well, it's just a matter of preference.

Q But, in any event, you and Mr. McGibbon and

Mr. Parker met in Denver?

A Well, we met with him, yes, sir.

Q Mr. Scardino wasn't present at that November 10 meeting, was he?

A No, sir.

Q That is the meeting when the stock certificate was actually transferred? Isn't it?

A Yes, sir.

Q That is the first time you ever saw that letter saying, "I hereby sell you the stock?"

A Yes.

Q You never saw Mr. Scardino sign that letter, did you?

A No, sir.

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Q How much did you make out of the [illegible]

A $3650.

Q You testified that there was approximately $400 and some-odd leftover that you and Mr. McKibbon divided up between yourselves?

A Yes, sir.

Q To pay your travel expenses?

A Yes, sir.

Q Would you say you divided it 50-50?

A I believe that was about right, yes, sir.

Q Then you identified a cashier's check in the amount of $450 which you sent to Reno made out to Mr. Tony Scardino?

A I sent it to Mr. Scardino, yes.

Q Mr. Scardino never called you and asked you to send that check?

A No, it was Mr. McKibbon.

Q If you and Mr. McKibbon had divided the 400 and some-odd dollars, why did you have to send the full 450?

A Well, this is kind of a -- he called me on the phone and said --

Can I say what he said?

THE COURT: Yes.

A -- he just said, "Tony said, 'If you don't send the travel expense back to him he is going to come down and give you a haircut.'"

And I said, "I don't want any haircut." And that was all I heard.

Q Mr. Scardino never asked you for that money?

A No, sir.

Q And you never got any kind of a call like that from Mr. Scardino?

A No.

Q That was Mr. McKibbon's thought?

A Yes.

Q And you don't know whether Mr. Scardino ever said anything to Mr. McKibbon about that or not?

A No, sir. How do I know?

MR. WALKER: Objection.

Q How long has it been since you have seen Richard McKibbon?

A The day he left that airport to my memory is the last time I seen him.

Q Do you know where we can find Richard McKibbon?

A Do I know him?

Q Do you know where we can find him?

A No, sir.

MR. PAPE: No further questions, your honor.

REDIRECT EXAMINATION

XX BY MR. WALKER:

Q Mr. Parris, do you know whether or not Mr. McKibbon worked for Mr. Scardino?

A Now?

Q At that time?

A No, I don't think so. He represented himself to me as a talent booking agent.

Q You didn't know what their relationship was?

A No, sir.

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MR. WALKER: I have no further questions, your Honor.

THE COURT: You are excused.

THE WITNESS: Thank you, Sir.

(Witness excused.)

THE COURT: We will take our luncheon recess now. 2.15.

Don't talk about the case. Don't let anybody talk about it with you.

(Luncheon recess.)

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AFTERNOON SESSION

2:15 P.M.

(Jury not present.)

MR. KIRSCHNER: Your Honor, I'm sorry for making this motion now as opposed to 4:30, but we were not advised yesterday that a particular witness would be testifying. That is why the motion is being made at this point.

First of all, your Honor, I would like to register some dismay --

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THE COURT: Motion for what?

MR. KIRSCHNER: It is going to be a motion to suppress evidence, suppress the testimony of a particular witness, but before I make a motion --

THE COURT: Just tell me what the ground is.

MR. KIRSCHNER: The ground, your Honor, is a conflict of interest. The ground is that at the time that this witness was interviewed by the government with respect to this case he was represented by the same attorney that Mr. Zuber was represented by and at that time the government was aware of that. This witness proceeded to cooperate with the government and offer evidence against Mr. Zuber.

THE COURT: To what?

MR. KIRSCHNER: To believe that he is

unconscionable government conduct, your Honor, knowingly--

THE COURT: I don't.

MR. WALKER: The facts are wrong, anyway

THE COURT: Even if they are right, I don't see any basis for suppressing evidence.

MR. KIRSCHNER: In addition to that your Honor, we have just been given the 3500 material of Mr. Gardner. It was not given to us last night. We understand he is going to testify. I would ask for a short adjournment to be able to review it.

THE COURT: Let me see the 3500 material.

MR. KIRSCHNER: There is apparently a couple of letters also, your Honor.

(Handed to court.)

THE COURT: Obviously it isn't of any great length. No. Do it now.

MR. KIRSCHNER: In addition to that your Honor, I would inquire of the government as to whether or not we have received all Brady material on Mr. Gardner concerning his credibility as a witness.

THE COURT: The government is under a continuing obligation, Mr. Kirschner, without court direction, to supply Brady material, and there wouldn't be anybody happier than you to have him fail to do it, if he did.

You can have such reasonable time as you need to look over that 3500 material. I will read it while he is reading it. Then I will know how long it takes.

MR. KIRSCHNER: When [illegible] conflict issue, may we have a hearing?

THE COURT: I see no basis for a hearing at all.

Can you represent what this witness is going to testify to?

MR. WALKER: Yes, your Honor. This witness is going to testify to a period of time in which he was in Mr. Segal's office in New York and dealings that he had with Mr. Howard, Mr. Zuber, Mr. Segal and Mr. Levine and what he observed in that office.

THE COURT: Was he attorney for Mr. Zuber?

MR. WALKER: No, he was not. No, he was never an attorney.

THE COURT: All right. Go ahead.

MR. KIRSCHNER: I assume the Court does not care to hear from us on that?

THE COURT: Is that a misstatement?

MR. KIRSCHNER: No, that is a correct statement, your Honor.

THE COURT: I don't see any basis for a suppression at all. I don't see any reason. If you [illegible] something--

MR. KIRSCHNER: What we are alleging, your Honor is that one lawyer, Mr. Berger, represented Mr. Zuber and Mr. Gardner at the same time that Mr. Gardner was cooperating with the government and may have compromised -- Mr. Berger may have given Mr. Gardner information about Mr. Zuber which will come out during the course of this trial. That is what we are interested in.

MR. WALKER: Any such information would have to be hearsay and would be inadmissible anyway, and the government doesn't intend to offer any.

THE COURT: All right, put him on, call your witness. Proceed.

MR. WALKER: Is your Honor ready to proceed with the trial?

THE COURT: Yes.

(Jury present.)

S O L F I N G A R, called as a witness by the government, having been first duly sworn, testified as follows:

MR. SIFFERT: May I proceed?

DIRECT EXAMINATION

BY MR. SIFFERT:

Q Mr. Fingar, how are you employed?

A I am self-employed.

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Q In what business?

A The dress manufacturing business.

Q And were you so employed in 1969?

A I was.

Q And directing your attention to 1969, did you purchase shares of Pioneer stock?

A Yes, I did.

Q Do you recall the dates and the number of these purchases?

A I don't recall the date.

Q I show you Government Exhibit 133 for identification and ask if that refresh s your recollection?

A Yes, it does.

Q Would you tell the jury the dates and the amounts of your purchases?

A 2,000 shares 11/10/69 at $8 per share, and on 12/11 a thousand shares at 6-3/4 dollars.

Q Did you receive a copy of this Government's Exhibit 133 from Hornblower & Weeks?

A I believe I did.

MR. SIFFERT: I offer this in evidence.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibit 133 received in evidence.)

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Q What was the total amount of the funds that you expended in the purchase of the 2,100 shares of Pioneer on 11/10/69?

A $15,230.

Q And with respect to the second purchase, what was the total amount that you paid?

A $6,887.50.

Q From whom did you buy or upon whose recommendation did you buy that stock?

A Well, on the recommendation of a young fellow by the name of Eddie Levine.

Q Do you know who Eddie Levine is?

A Do I know who he is?

Q Yes.

A I know who he was, yes.

Q Who was he?

A He was a salesman selling piece goods to our company and companies of our caliber.

THE COURT: Just keep your voice up so everybody can hear.

Q Do you know Jack Levine?

A Yes, I do.

Q Do you see him here in the courtroom?

A Yes, I do.

Q Is Eddie Levine related to Jack Levine?

A He was his son.

Q Do you recall the conversation with Eddie Levine when he recommended that you purchase Pioneer stock?

A No, I don't recall any of the conversation per se, other than the fact that he had recommended buying it, buying the stock, and I don't recall any part of the conversa-

ms?

tion at this moment.

Q I show you Page 3560-A and ask if that page refreshes your recollection?

A Yes, it does.

Q What did he say?

A That it was a mining stock and that it would go up.

Q That the price would go up?

A Yes.

Q Do you recall whether Mr. Levine told you --

MR. WINOGRAD: Which? Jack Levine are we speaking about?

MR. GIFFEN: Eddie Levine.

Q Do you recall whether Mr. [illegible] Levine stated to you --

MR. WINOGRAD: Objection to the leading nature of the question.

THE COURT: Sustained.

Q Did he say anything else about Mr. [illegible]?

A Not to my best knowledge.

Q Did he say anything --

MR. WINOGRAD: Objection.

THE COURT: Sustained.

Q Did you say not to buy [illegible] stock that he gave

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you any more information?

A Nothing. He said that there would be some literature coming out.

Q And that it would be sent to you.

A That is right.

Q Did you receive that literature?

A I don't believe so.

Q Did you ever speak to Abner Berman about the purchase of Pioneer stock?

A Yes, I did.

Q Did he ask you --

MR. WINOGRAD: Objection.

THE COURT: Sustained.

Q What did he say to you and what did you say to him?

MR. SIFFERT: Subject to connection, your Honor.

THE COURT: Speak to what?

MR. WINOGRAD: Abner Berman.

THE COURT: Sustained.

Q What did he say to you and what did you say to him?

MR. SIFFERT: Subject to connection, your Honor.

THE COURT: Speak to what?

MR. WINOGRAD: Abner Berman.

THE COURT: Sustained.

MR. SIFFERT: Subject to connection.

THE COURT: Sustained. He is not a co-conspirator.

MR. WINOGRAD: No.

Q What happened to the stock in the period after you purchased it? Let me rephrase that.

What happened to the value of the stock after you purchased it?

A It went down.

Q Were you ever able to sell the stock in Pioneer

A I never tried to.

Q Why not?

A Well, I felt that it would go up

MR. WINOGRAD: Objection.

THE COURT: Sustained. Strike it.

Q Do you know the current value to your knowledge of that stock?

A I would say at this moment I think it is worthless.

MR. SIFFERT: No further questions.

CROSS EXAMINATION

XX BY MR. WINOGRAD:

Q Good afternoon. Mr. [illegible] Broadcast and

I represent Mr. Jack Levine.

Did Jack Levine ever speak to you about the stock?

A No.

Q Mr. Finger, you indicated that Mr. Levine, the son of Jack Levine, is now deceased?

A Yes.

Q Do you know how old this [illegible]

MR. SIFFERT: Objection.

THE COURT: Overruled.

Q In 1969?

A How old he was?

Q Yes.

A I don't know his exact age. I would say he was in his late 20's.

Q Was he a textile salesman who called upon your company and sold your company materials?

A Yes, he was.

Q In the course of his calling on [illegible] did you and he discuss [illegible] of various items?

A Different times, yes.

Q Was this the only stock that you and he discussed?

A I really don't remember. I think I may have discussed other types of stocks.

MR. SIFFERT: Objection and move to strike.

THE COURT: Do you have any recollection of having discussed any other stock with Eddie Levine, andy definite recollection of having discussed any other stock with Eddie Levine?

THE WITNESS: I don't have any definite recollection, no.

Q Did Mr. Eddie Levine indicate to you what kind of company Pioneer was?

A He did indicate that it was a mining company.

Q Did he have any expectations as to what was going to happen with those mines?

MR. SIFFERT: Objection only to the extent that he expressed them.

THE COURT: Overruled.

MR. WINOGRAD: Your answer, sir?

THE COURT: Do you remember the question?

Will you repeat the question?

Q Do you remember what he told you with respect to those mines?

A I really don't remember exactly what he said, other than the fact that it was a good thing and it was going to go up.

Q Did you realize that it was a speculative stock?

A Yes, I did.

Q Nevertheless, you invested?

A That is right.

Q Had you invested at that time in other speculative stocks?

A Yes.

Q And in numerous amounts of those types of stock?

A In those times.

Q When you say "those times," what do you mean, sir?

A Well, it was a time when the speculative stocks were very good, I guess you would call it good, and I sort of bought them in the morning and sold them in the afternoon or evening.

Q Qnd you never discussed this stock with M.r Jack Levine?

A No, I didn't.

Q Do you know Mr. Levine to have been a prize-fighter?

MR. SIFFERT: Objection.

THE COURT: Sustained.

MR. WINOGRAD: No further questions.

CROSS EXAMINATION

BY MR. DOYLE:

Q Mr. Fingar, my name is John Doyle and I represent the defendant Alan Segal.

Do you know Mr. Segal, sir?

A I don't know if I do. I don't remember him.

Q Directing your attention to the second trade reflected on Government's Exhibi 133 in evidence, do you have any recollection at this time as to by whom payment was made for that trade?

A To whom I paid the money to?

Q Do you have any recollection as to who paid for the trade?

A Yes.

MR. SIFFERT: Your Honor --

THE COURT: I'm sorry.

What is the question to which there is objection? You are moving too fast.

MR. SIFFERT: Would the reporter read it?

(Question read.)

MR. SIFFERT: I withdraw the objection.

A It is my stock; I paid for it.

Q Is that your best recollection?

A Yes, it i .

THE COURT: Any other cross?

You are excused.

(Witness excused.)

MR. SIFFERT: The Government calls John Chetirko.

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J O H N C H E T I R K O , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIFFERT:

Q By whom are you employed?

A Bank Leumi Trust Company.

Q Is the Bank Leumi Trust Company the successor bank to the First Israel Bank & Trust?

A What is correct.

Q What is your position at the Bank Leumi?

A I am assisting banking officer.

Q As such are you familiar with the books and records of the bank?

A Yes, I am.

Q Are the books and records of the First Israel Bank kept and maintained by the Bank Leumi Trust Company?

A That is correct.

Q I show you Government's Exhibits 25-A, 25-B

and 25-C, those three, and ask you if you can identify them?

A Yes, I can.

Q Are these original bank records made and kept in the ordinary course of business?

A Yes, they are.

Q Is it the ordinary course of business to keep these records?

A Yes, it is.

Q Are the entries on Government's Exhibit 20-A --

MR. DOYLE: Your Honor, there is no objection as to competency.

MR. SIFFERT: I offer them.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibits 25-A, 25-B and 25-C were received in evidence.)

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Q I show you 25-E and ask if this was received by the First Israel Bank & Trust Company in the course of business?

MR. DOYLE: Will you simply say what it is. There will be no problem.

No objection.

THE COURT: Received.

(Government's Exhibit 25-E was received in in evidence.)

MR. DOYLE: May I see the exhibits for one moment?

No questions, your Honor.

THE COURT: Is there any cross?

You are excused.

(Witness excused.)

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MR. SIFFERT: May I read to the jury from this document, one of these documents?

THE COURT: Yes.

MR. SIFFERT: Government Exhibit 25A in evidence is a bank record, an account card on a loan to Mr. Swidler and on the back is reflected, under collateral, on 11/17/69, 2,000 shares, Pioneer Development Corporation I/N/O, in the name of, Francine Zahl.

Thank you.

THE COURT: All right, next witness.

MR. WALKER: Government calls at this time Michael Gardner.

M I C H A E L G A R D N E R, called as a witness by the government, having been first duly sworn, testified as follows:

MR. WALKER: May I proceed, your Honor?

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Gardner, directing your attention to early 1969, how were you employed at that time?

A In the brokerage business, sir.

Q And what specifically was your position in the brokerage business?

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A Gardner Securities Corporation, 15 William Street, president.

Q Now, did there come a time while you were associated with Gardner Securities that you met Alan Segal?

A Yes, sir.

Q And can you tell us approximately when that occurred?

A In early November, 1969, sir.

Q Who introduced you to Mr. Segal?

A A man by the name of Guido Valente.

Q And would you tell the court and jury the conversation where you met Mr. Segal and who was present?

A I met Mr. Segal in his office, and myself, Mr. Valente and Mr. Segal were present, sir.

Q Was there a conversation at that time?

A Yes, sir.

Q What was the conversation?

A Well, the original pretext of the meeting was I was looking for financing and Mr. Segal owned a hotel that he was trying to mortgage, and through his potential mortgage I was hoping to get financing for my firm.

Q During the course of that conversation, was there any discussion concerning Pioneer Development?

A Yes, sir.

Q And would you tell us what was said, as best you can recall it, on that subject?

A Just introductory. Mr. Segal described the company and its assets, which was a mine, to me at that time.

I believe he asked me to go into the pink sheets or join the other people that were trading the stock at that time, and asked me if I could create any customer interest in the stock.

Q Now, did you, at Gardner Securities, do any trading in Pioneer at Mr. Segal's request, direction or suggestion?

A Yes, sir, we did a nominal amount. We did go in the sheets for a previous period of time.

Q And were there other people in the sheets?

A Yes, sir.

Q Did you have any discussions with Mr. Segal concerning who else was in the sheets?

A At that point?

Q At that point or shortly thereafter.

A Yes, sir, we discussed the company in general and its trading activity and such.

Q Did there come a time, sir, when Gardner Securities went out of business?

A Yes, sir.

Q Would you tell the court what you did for office space?

MR. DOYLE: Can we find out when?

Q Can you give us the approximate time?

A In the middle of December, '69, sir.

Q Would you tell the court and jury what you did for office space following that?

A At Mr. Segal's invitation I used a desk and telephone in his office.

Q How frequently would you use this desk and telephone?

A Virtually every day, I would use it as an office.

Q And, sir, do you recall any conversations at or about the time that you began to use that office with Mr. Segal concerning the stock in Pioneer Development Corporation?

A Specific conversation? I mean, there were constant conversations regarding Pioneer Development Corporation and the shares of it.

Q Are you able to distinguish any particular conversation or were they just frequent conversations?

A No, it was relatively continuous, you know, as Pioneer was a major project and a major undertaking for

Mr. Segal, and I was there all day, so it was just continuous give and take on it.

Q Sir, do you recall Mr. Segal talking to other people about the stock?

A Yes, sir.

Q And what do you recall about that?

MR. DOYLE: Is this in Mr. Gardner's presence?

THE COURT: Could you fix the people who were there?

Q Was this in your presence?

A Yes, sir.

Q And were these conversations in person or over the telephone?

A Some of each.

Q And, sir, what can you recall about the conversations in person?

MR. DOYLE: Your Honor, I object to this unless we have a specific identification of who else was present and when it occurred.

MR. WALKER: Very well.

Q Do you recall individuals to whom Mr. Segal spoke?

A I recall some individuals, yes, sir.

Q And who were those?

A Well, as fa as people that were making a mark in

the stock, I introduced Mr. Segal to Michael Karfunkel, who was already making a market --

MR. DOYLE: I object to this unless this is a conversation in the presence of Mr. Segal.

THE COURT: Sustained.

MR. DOYLE: Or Mr. Gardner or both.

MR. WALKER: Your Honor, I believe I established that.

Q The conversations which you are testifying about were in your presence, is that correct?

A Yes, sir.

Q And can you recall, sir, any particular conversations that were made while the stock was trading, while you were in Mr. Segal's office?

A I recall numerous such conversations, sir.

Q Would you tell us which ones you recall and who they were with?

A Well, as I started to say, the first ones that I can remember was with a broker who was making a market in the sheets by the name of Michael Karfunkel.

MR. DOYLE: Was this in person or on the telephone?

THE WITNESS: In person.

MR. DOYLE: Where was it?

THE WITNESS: In Mr. Segal's office, I believe

Q Do you recall the approximate time of that conversation, approximate date?

A Some time in December of '69, sir.

Q Would you tell the court and jury how Mr. Karfunkel came to come to that office?

MR. DOYLE: Objection, your Honor.

THE COURT: Overruled.

A Mr. Segal and I had been discussing the stock and we noted the fact that this broker was in the sheets who Mr. Segal had never spoken to and was unknown to him, and I volunteered that I know him and would call him and see if he can come up to the office and see, maybe we can get him to help with the deal, to cooperate.

Q And what did you do after that conversation with Mr. Segal?

A I did exactly that. I called him and I arranged for him to come up to the office and meet with Mr. Segal.

Q And was there a meeting with Mr. Karfunkel and Mr. Segal and yourself?

A Yes, sir.

Q Directing your attention now to that meeting, what do you recall being said by yourself, Mr. Segal or Mr. Karfunkel at that meeting?

A Well, Mr. Karfunkel discussed his past trading

in the stock with Mr. Segal, said that the stock had been good to him, he had made a profit, it had been a profitable stock for him to trade, and in the future, you know, he would be happy to cooperate with the people who were more involved in it, would be principals in the deal, and a working relationship was worked out.

Q Would you say -- could you tell us what the relationship was that was worked out?

A Well --

MR. DOYLE: Your Honor, if this is a specific conversation that he is relating --

MR. WALKER: Yes.

Q Would you tell us what was said at this conversation concerning what would be done in the future?

A Well, we worked out a situation where certain directed trades were done through him and he was in touch with the office, and that he wouldn't have any losses on the stock in the future if he would follow our instructions.

MR. DOYLE: Is this something Mr. Karfunkel said in the presence of Mr. Segal?

THE COURT: Sustained. Strike it out. It's much too general.

Mr. Gardner, tell us what you said and what the others said and who said it.

Q Do you recall, sir, what was said concerning what could be done --

THE COURT: Not what was said. Who said what to whom is what we are after, Mr. Walker.

MR. WALKER: Yes, your Honor.

THE COURT: You talked with these witnesses before you put them on the stand.

MR. WALKER: Yes, your Honor.

A Mr. Segal asked Mr. Karfunkel whether he would work with him in trading the stock as opposed to working independently and Mr. Karfunkel replied that he would be happy to.

Q Was anything said, sir, concerning directed trades?

A Yes. He was asked again by Mr. Segal whether he would be willing to execute that kind of transaction, and he replied that he would be happy to.

Q Would you tell us, sir, what is a directed trade?

A A trade where the broker, in this context is where the broker, in effect, is getting both sides of the transaction without any risk; if someone buys a thousand shares from him at one price, someone else is going to sell it to him shortly thereafter at a price slightly below that.

Q And in the case of a directed trade, does that

reflect the normal operation of market conditions?

MR. DOYLE: Objection, your Honor; calls for a conclusion.

THE COURT: Overruled.

A No, sir.

Q What is the difference between the directed trade and a free market trade?

A Well, a trade being directed through a broker is being done for someone's profit. You are avoiding the risk of having the trade lost in the market as a whole. You are using a broker as a conduit to go through.

Q Now, following that meeting do you recall any directed trades that occurred through Economic Planning, Mr. Karfunkel's firm? Do you recall whether or not there were directed trades?

A I remember such transactions did occur. I don't remember the specific trades.

MR. DOYLE: May we have the source of the information your Honor?

THE WITNESS: Again, I was in the office every day and I was privy to constant conversation.

MR. DOYLE: Can we hear what the conversations were, who said what?

THE COURT: Yes, please.

MR. WALKER: Very well.

THE COURT: Put the evidence in, would you?

MR. WALKER: Very well, your Honor.

Q Mr. Gardner, did you direct any trades through Economic Planning, do you recall?

A I don't recall, sir.

Q Now, did you observe Mr. Segal directing any trades through Economic Planning?

MR. DOYLE: Objection, your Honor.

THE COURT: Overruled.

A Yes, sir.

THE COURT: What did you hear him say?

THE WITNESS: That so and so would come in and buy stock and another broker would come in and sell stock; he would take direction on where he was buying and selling shares.

Q And how frequently did you hear Mr. Segal say that?

A To Mr. Karfunkel?

Q Mr. Karfunke.

A On maybe two or three occasions that I can remember.

Q Now, do you recall any other directed trades? Did you hear Mr. Segal make any other directed trades?

A Yes, sir.

Q Right now, do you have a specific recollection

of who they were with?

A There was a broker by the name of Mann & Company somewhere in New England. I made one trade for Mr. Segal in my name at Kippin & Company in Canada, where I directed them to purchase stock from someone else specifically.

I don't remember who.

I remember placing the order.

I don't recall specifics other than that, sir.

Q Now, did you ever have any conversations with Mr. Segal wherein he complained about stock hurting the market?

A Yes, sir.

Q And do you recall again where those conversations occurred?

A Well, they probably started on the telephone between myself and Mr. Segal, before I was in Mr. Segal's office daily and continued into the time when I was using a desk in Mr. Segal's office.

Q And what did Mr. Segal say to you over these conversations?

A That he was being back-doored, in effect, that stock was being sold into the market that was not supposed to have been sold into the market.

Q And what do you understand the term "back-doored"

to mean?

A Just what I tried to imply, the stock was being sold that should not be coming in, stock that was not supposed to have been being sold at that point was being sold into this market via disguised method or some such.

Q Sir, while you were in the office, did you meet amn by the name of Jack Levine?

A Yes, sir.

Q And do you see him here in the courtroom?

A Yes, sir.

Q And were you privy to any conversations at which you, Mr. Segal and Mr. Levine were present?

A Yes, sir.

Q And would you tell us what those conversations were?

A They were relative to Pioneer. Mr. Levine was in the office frequently and was a close friend of Mr. Segal's, and he was trying to create activity in the Pioneer --

MR. WINOGRAD: Objection.

THE COURT: Strike it out. Sustained.

What were the conversations which you heard?

Q Do you recall any specific conversations?

A There were continual conversations. Again, Mr.

Levine was a regular visitor in the office. It wasn't one specific meeting.

THE COURT: What did he say at these regular visits in the office?

THE WITNESS: The basic discussion was the question of Mr. Levine's ability or lack of it --

MR. WINOGRAD: Objection.

THE COURT: Sustained.

Q Did Mr. Levine ever speak to you and complain to you about anything during that period of time?

A Yes, sir.

Q And can you tell us whether that was on one occasion or more than one occasion?

A On several, sir.

Q And do you recall any specific one?

A I remember a conversation with Mr. Levine where he was complaining about money and the fact that he was not able to do as much as he would like to be able to on the Pioneer because he wasn't able to get paid what he should and because of the nature of circumstances at the time.

Q Directing your attention to late December or thereabouts, do you recall a specific conversation with Mr. Segal concerning a problem that had occurred in the west?

A Yes, sir.

Q And would you tell us what that conversation was?

A Well, Mr. Segal had become aware of --

Q What did Mr. Segal say to you?

MR. PAPE: Objection, your Honor. Could we get who was where and when?

MR. WALKER: Very well.

THE COURT: That seems to be against the rules with Mr. Walker. I don't know why I must rule on it 4,000 times.

Fix the time.

MR. WALKER: Very well.

THE COURT: The place. Who was there and who said what to whom, Mr. Walker.

MR. WALKER: Verywell, your Honor.

THE COURT: Or I will take the witness off the stand.

MR. WALKER: Very well.

Q Mr. Gardner, directing your attention to late December or thereabouts, did you have a conversation with Mr. Segal concerning a problem that had developed; yes or no?

A Yes, sir.

Q Where was the conversation?

A In Mr. Segal's office.

Q Who was present at that time?

A Mr. Segal and myself.

Q What did Mr. Segal say to you at that time?

A That he had now come to the realization that some people that he was working with out west in Nevada were, in effect, treating him unfairly and robbing money from him, basically in two different ways: they had sold stock in Pioneer which was not supposed to have been sold into the market, and he, as a result, had to buy the stock, and also via the hotel that he owned, he was sending money out there constantly in support of a closed hotel which was creating no income for him.

MR. DOYLE: I can't hear the witness. Speak a little louder, please.

THE COURT: "Sending money out there, supporting a closed hotel which was" what?

THE WITNESS: Which was draining him of--

MR. PAPE: I object to that on relevance, your Honor -- hotel.

THE COURT: Overruled.

Q Go ahead.

A I don't know where I was. He had sent a lot of money out and he had come to the realization that he had been taken advant ge of and that it was time he did something about it.

Q What did he ask you to do?

A He discussed the prospect of whether I knew anyone I could send out to talk to these people and sit down with them and see if the problem could be resolved.

Q What did you say to that?

A I suggested someone that I had known at that point.

Q Who was that?

A Bob Howard.

Q Do you see Mr. Howard here in the courtroom?

A Yes, sir.

MR. WALKER: May the record reflect the identification?

THE COURT: Yes.

Q What did you do at that point?

A I arranged a meeting again in Mr. Segal's office between Mr. Segal and Mr. Howard.

Q Were you present at that meeting?

A In the beginning I was for part of it.

Q Can you tell us what was said at that meeting between Mr. Howard, Mr. Segal and yourself?

A Mr. Segal explained to Mr. Howard what his problem was.

Q What did he say?

A That this group of individuals in Nevada had, in effect, been stealing money from him or taking advantage of him and of the situation and that he was looking for a way to resolve that and get some of it back and straighten out the problem.

Q What did he say he wanted done?

A He wanted someone to go out there and sit down with them and try to straighten it out.

Q What did you do at that point in the conversation?

A I don't remember being present for much more of the conversation than that, sir.

Q Following that meeting did you have a conversation with Mr. Howard before Mr. Howard went out? Do you recall any further conversations with Mr. Howard?

A Before he left?

Q Yes.

A Not specifically, sir.

THE COURT: When was this meeting?

THE WITNESS: Late December, maybe the third week in December '69.

Q Do you recall a conversation, a telephone conversation with Mr. Howard later on?

MR. NEWMAN: When and where, your Honor?

Q What was the next conversation that you had

with Mr. Howard?

A The next conversation I remember with Mr. Howard was on the teleph one in Mr. Segal's office from Nevada, where he was.

Q What did he say?

A He had not met with the people as yet, but he was in the process of arranging gathering everyone together the next day, that they were all going to meet together and have their meeting.

Q Did you receive a subsequent telephone call from him?

MR. NEWMAN: May we have the date on that?

Q The approximate time?

A Late December at this point in '69. Yes, I spoke to Mr. Howard again on the phone out there, and the next conversation I specifically recall him telling me there had been a meeting and there were a lot of people involved, because the fellows they went to see also knew a lot of people and they brought some people in from the West Coast and that he had to bring a lot of people in with him and everything had been resolved, was in the process of being resolved and he would be back to me in the next couple of days.

Q During these phone conversations was any other

individual mentioned?

A Ed Zuber.

MR. KIRSCHNER: Your Honor, which phone conversation?

MR. WALKER: The phone conversation he just testified to about the meeting.

Q Is that correct?

A I assume so, yes, sir.

MR. KIRSCHNER: I don't know which conversation we're talking about.

THE WITNESS: The phone conversation between myself and Mr. Howard with him in Reno, Nevada and me in New York.

THE COURT: When?

THE WITNESS: In late December, 1969.

Q What was said concerning Mr. Zuber in that phone conversation?

A That was the first time I found out that Mr. Zuber had become involved. All I specifically recall is thathe had been brought in, th[illegible] Howard had contacted him to come inand help him with the problem. He had come in for the meeting from California.

Q Following that telephone call was there a meeting in New York?

A Well, that would be a little bit later when Mr. Zuber came in to New York.

Q What was the meeting on that occasion?

A Well, that was the first time anyone came in after the meeting to tell Mr. Segal what had happened and what had been done.

Q Can you tell us, sir, who was present at that time and when the meeting occurred?

A I only recall Mr. Zuber and myself and Mr. Segal being present in Mr. Segal's office again, I believe, still in late December, probably the last week now in December, 1969.

Q What was said at that time?

A Again I was only present for a portion of the meeting, at least, that is what I can recall. Mr. Zuber explained to Mr. Segal that the problem had been resolved, was in the process of being resolved, and Mr. Howare was still out West and would be in the next day or two and he was picking up some stock from a brokerage firm and from some individuals and that everything was in the process of being resolved and that no one was going to steal from Mr. Segal again because the situation was now under control.

THE COURT: You say he was picking up stock?

THE WITNESS: Mr. Howard was picking up stock. The conversation was with Mr. Zuber.

Q Was anything said, sir, at that time concerning what had happened at the meeting?

A Just that there had been a lot of people there and there was a very tough session, that a lot of people were brought in and there was a whole big to-do, so to speak.

Q Following that meeting did you have occasion when you met Mr. Howard shortly thereafter?

A Yes, sir.

Q Would you tell us what happened on that occasion? Where was the meeting and who was present and when did it occur?

A Again in Mr. Segal's office, and Mr. Howard had come back and came up to Mr. Segal's office, and myself, Mr. Segal and Mr. Howard in Mr. Segal's office still in late December, which is a day or two after Mr. Zuber had arrived.

Q Was there a conversation, sir, at that time concerning coats?

A Yes, sir.

Q Would you tell us what was said at that time?

A I guess we were around the holiday season and

Mr. Howard said he wanted to buy a fur coat or fur coats for his wife, I assume, and I knew a furrier that they might be able to deal with for stock as opposed to cash, and I answered in the affirmatigve, and I sent them to Allen Grant, who is a furrier here in Manhattan.

Q Do you have a precise recollection of the day of that meeting?

A No, sir. It would be the very end of December, but I don't know what day it is.

Q Let me show you this document and see if this refreshes your recollection as to the date of the meeting.

A This is January 10 of 1970, and this is a bill from Mr. Grant.

Q Does it help you remember when you met Mr. Howard and discussed the coats?

A Yes.

Q Approximately when?

A It would be early January, then, probably a day or so before that.

Q Did you make a telephone call yourself as a result of Mr. Howard's conversation to Mr. Grant?

A I believe I did, yes, sir.

Q Subsequent to that do you know what happened with respect to that?

A Well, I made a telephone call and explained to Allen that this fellow wanted to come up.

MR. NEWMAN: Objection. Hearsay.

THE COURT: Overruled.

A I told him that this fellow wanted to come up and negotiate the purchase of a fur coat with him and made arrangements for him to be able to do that.

Q Following that meeting did you have a subsequent conversation with Mr. Grant?

A Yes, sir, I did.

Q Would you tell us what was said?

MR. NEWMAN: Objection. Hearsay.

THE COURT: Sustained.

Q Following that meeting, shortly thereafter, did you have a further conversation at which Mr. Zuber and Mr. Segal were present?

A Yes, sir.

Q Do you recall anything that was said at that meeting? When did it occur and where?

A It would be again in early January in New York City in Mr. Segal's office.

Q Was it before or after?

A I think I'm wrong. I think all this happened after January 1st. I said that Howard and Zuber and

everyone came in the very end of December. I must be mistaken, because I have too much happening at the end of December. It would have to be in January at that point.

Q What do you recall the conversation was with Mr. Zuber?

MR. KIRSCHNER: I still don't know when this conversation occurred.

Q You have seen this particular document.

Was the conversation that you had with Mr. Zuber after that?

A Yes, sir.

Q What was that conversation?

A They told me about the fur coats.

MR.DOYLE: Who is "they"?

THE COURT: We'll take a short recess.

MR WALKER: Very well, your Honor.

(Short recess.)

THE COURT: Mr. Walker, see if we can't get definite testimo ny, definite time, definite people definite conversation.

MR. WALKER: Your Honor, I am almost finished with this witness.

BY MR. WALKER:

Q Mr. Gardner, have you yourself ever been con-

victed of any crimes involving fraud?

A Yes, sir.

Q Were you convicted in this Court House?

A Yes, sir.

Q What sentence did you get?

A A year and a day.

Q Have you been convicted in another Court House?

A In the Norther District of Illinois.

Q What sentence did You get there?

A Three years.

Q Are those sentences pending at the present time?

A Yes, sir.

Q At the present time are you currently cooperating with the Government in certain fraud investigations?

A Yes, sir

Q Do you understand from your lawyer that as far as Pioneer is concerned that you will not be prosecuted?

A Yes, sir.

Q Do you have any other understanding with regard to any other prosecutions of cases that were known by the Government prior to the time you agreed to cooperate?

A No, sir.

Q Is it your understanding that you may be prosecuted On these other cases?

A Yes, sir.

MR. WALKER: I have no further questions.

THE COURT: Have you had an opportunity to read the 3500 material now?

MR. KIRSCHNER: Yes, I have.

CROSS EXAMINATION

BY MR. KIRSCHNER:

Q Were you convicted of a Federal felony in the Souther District of New York?

. You testified to that?

A Yes.

Q And that involved a conspiracy to commit securities fraud?

A Yes, sir.

T5

Q You received a sentence of one year and one day?

A Correct.

Q And, sir, you were also convicted of a federal felony in the Northern District of Illinois, is that correct?

A Yes, sir.

Q And was that felony knowingly, wilfully and unlawfully receiving and concealing ten stolen U.S. Treasury bills having a face value of $1,000,000?

A Yes, sir.

Q And you received a three-year sentence in that case, is that correct?

A Correct.

Q And, sir, is it your understanding that the one year and one day sentence and the three-year sentence are to be consecutive?

A Yes.

Q So, in other words, you are facing four years and one day, is that correct?

A Yes, sir.

Q Now, sir, is it part of your agreement with the government that in return for your cooperation the government will make recommendations to both of those courts in conjunction with the motion to reduce those sentences?

A No, sir.

Q Sir, do you intend to make motions to reduce those sentences?

A Yes, sir.

Q At the time you make those motions, do you intend to have your lawyer ask the government to bring forth the nature of your cooperation?

MR. WALKER: Objection.

A Yes, sir.

MR. WALKER: He is asking for something in the future, what this witness will intend some time in the future.

THE COURT: I think we can establish what he hopes.

MR. WALKER: Very well.

THE COURT: Overruled. Go ahead.

Q It is your intention to make that motion?

A Yes, sir.

Q Sir, is it also your intention or is part of your agreement that the government will make certain recommendations if you are incarcerated to the Bureau of Prisons?

A Yes, sir.

Q What are those recommendations as you understand them to be?

A I will be held in a safe and secure place, words to that effect.

Q What does that mean to you?

A Some place where I will not be physically endangered.

Q You are testifying in other cases also, is that right?

A Yes, sir.

Q Is it also your understanding that part of your agreement with the government is that the government will make certain recommendations to the Board of Parole?

A No, sir.

Q On your behalf. Is it your intention if you are incarcerated to have the government make your cooperation known to the Board of Parole?

A Yes, sir.

Q Sir, is it part of your agreement with the government that the government will make known to other jurisdictions investigating criminal activity that you may be involved in the nature of your cooperation here?

A No, sir.

Q Is it your desire to have the government make that known to those jurisdictions?

A If it would be helpful, of course.

Q Now, sir, have you been the subject of various SEC proceedings?

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A Yes, sir.

Q Can you relate for us what those proceedings were indicating the caption?

A Indicating what?

Q The caption, the name of the case.

MR. WALKER: Your Honor, I don't see how these are relevant, civil proceedings.

MR. KIRSCHNER: That's correct, your Honor. If I may, your Honor, may I approach the bar?

THE COURT: Yes.

(Side bar.)

MR. KIRSCHNER: This is the letter outlining the agreement that the government has with him.

THE COURT: I have read it.

MR. KIRSCHNER: It is part of the government's agreement to bring forth his cooperation to the attention of any public authority that may be investigating and there are a number of SEC civil matters that may turn into criminal matters, and I want to know what this witness' thought is with respect to that, if he believes that by testifying here--

THE COURT: I will let you explore it.

MR. KIRSCHNER: Thank you.

(Open court.)

MR. KIRSCHNER: Will the reporter read the last question?

(Question read.)

Q Start from the beginning and bring us up to the present, if you can.

A The first would be Gardner Securities.

Q What was the nature of that proceeding?

A I signed a limited injunction relative to -- without admitting or denying allegations relative to bookkeeping net capital anti-fraud provisions of the securities law.

Q And the SEC filed a complaint against you?

A No. The injunction was, in effect, negotiated by my attorneys and it was the settlement of the matter.

Q I'm sorry?

A This injunction I referred to settled that matter. That was what was negotiated.

Q Is it your belief that that matter may result in a criminal proceeding against you?

A No, sir.

Q If there were to be a criminal proceeding against you as a result of that matter, would it be your desire to have your cooperation brought to the attention of the appropriate authorities?

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A If it would be helpful, of course.

Q What about the next matter? Perhaps I can refresh your recollection.

A I know the names. I'm just trying to think of them in order.

THE COURT: Cross-examination; you can put leading questions. It saves time, Mr. Kirschner.

MR. KIRSCHNER: Yes, your Honor.

b2 Q Was the next proceeding in which you were enjoined by the SEC entitled Radio Hills Mines, Ltd.?

A Very possibly.

Q What was the nature of that situation?

A It was a Canadian Mining Company which I owned, and it was a stock fraud situation involving certain trades in the stock of that company.

Q Did you sign an injunction with the SEC with respect to that, promising not to do certain activities?

A Relative to that stock, yes.

Q Is it your understanding that there is presently a criminal investigation concerning that matter?

A Presently? No, it's not, sir, not to my knowledge.

Q Have you been told by anyone that your cooperation would be brought to the authorities that may be investigating

that matter?

A No, sir.

Q Have you been told by anyone that you wouldn't be indicted in that matter as a result of your cooperation?

A I never discussed that matter with anyone relative to being indicted.

Q Directing your attention to Spectro Ltd., what was the nature of that matter, sir?

A It was another stock case, another stock fraud.

Q Did the SEC file an injunction against you with respect to that?

A I consented to an injunction again. Once I had signed one, I just signed everything else that they brought because they were all the same.

Q What were you enjoined from doing?

A From violating certain sections of the securities laws.

Q Did those sections relate to fraud and misrepresentation?

A I believe, yes, I wouldsay so.

Q Is it your understanding that the Spectro Ltd. matter is presently under investigation?

A No, sir, it is not.

Q Do you know that for a fact?

A No, sir, it is not under investigation, to my knowledge.

Q If it was under investigation, would you want your cooperation brought to the attention of the appropriate authorities?

MR. WALKER: Objection.

THE COURT: I think that is pretty far out, don't you, Mr. Kirschner?

MR. KIRSCHNER: Yes, your Honor.

Q With respect to Control Metals, were you enjoined with respect to that matter?

A Yes, sir.

Q What was the nature of that?

A The same as the others.

Q Control Metals was actually a criminal case, was it not?

A Yes, sir. Well, after the civil injunction.

Q Were you told that if you cooperated in that case that you wouldn't be indicted?

A Yes, sir.

Q Directing your attention to the matter of Stern, Haskel, Inc., can you tell us what that was about?

A The same as the others.

Q You were e joined from doing certain acts?

A Yes, sir.

Q Is it your understanding that there is presently a criminal investigation with respect to that?

A Yes, sir.

Q Now, Mr. Gardner, have you ever given false testimony to a government agency?

A No, sir.

Q Have you ever lied to the FBI?

A Yes, sir.

Q When did that occur?

A Upon my arrest in Chicago.

Q Will you explain to us what the nature of that was, who was present, what occurred?

MR. WALKER: Objection, your Honor. I think that if he wants to put the specific statement to the witness he may be entitled to do that, but not to drag out a whole arrest.

THE COURT: I think so. Put a leading question. It is cross-examination.

MR. KIRSCHNER: All right, sir.

THE COURT: You have as much trouble with that as Mr. Walker does with fixing the time.

MR. KIRSCHNER: I am not used to asking questions from this side, your Honor.

Q Mr. Gardner, did you lie to the FBI when you told them that you had no knowledge of approximately $1,000,000 in Treasury notes?

A I never told them that.

Q It's your testimony you never told the FBI that?

A From the point of arrest on. Yes. Yes, from the time at which I knew I was talking to the FBI, that would be my testimony.

MR. GREENBERG: Speak up.

THE WITNESS: From the point where I found out that I was speaking to the FBI, that would be my testimony.

Q From the point you found out you were speaking to the FBI --

A From the point of my arrest, when the FBI took me into custody.

Q Yes, sir?

A Yes, I never told them that I had no knowledge of the Treasury bills.

Q What was the nature of the lie that you told to the FBI?

A The general nature of the story as to how I came into possession of them.

Q Did you lie to the FBI concerning the involvement of other persons in that particular transaction?

A Yes, sir.

Q Have you lied to the FBI on other occasions?

A No, sir.

Q How have you been employed since 1968?

A You want me to give you my --

Q Just give me a general idea.

A Most recently as salesman for a leasing company and selling oil and gas participations.

MR.KIRSCHNER: I have no further questions of this witness. Thank you, your Honor.

MR. DOYLE: May I proceed, your Honor?

CROSS EXAMINATION

BY MR. DOYLE:

Q Mr. Gardner, my name is John Doyle and I represent Alan Segal.

First of all, directing your attention to your testimony on direct examination about the Pioneer Development Corporation, did I understand you to testify that you have been told that you will not be prosecuted in that case?

A Yes, sir, my own attorney has told me that I am not in danger of prosecution by testifying today.

Q Directing your attention to Government's Exhibit 3581 for identification, to page 2 of the letter, have you seen the letter, Mr. Gardner?

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A Which one?

Q This is a letter addressed to Mr. Maloney.

A Yes, sir.

Q And directing your attention to this sentence in that paragraph, look at the sentence and read it in context.

A "It also includes the Pioneer" --

Q You don't have to read it out loud because it is not in evidence.

THE COURT: Read it to yourself.

THE WITNESS: I understand. Thank you, your Honor.

(Pause)

Q Doesn't that letter indicate that you have not been promised immunity in the Pioneer Development Corporation situation?

A Yes, sir. It does.

Q And isn't that a direct contradiction of what you said on direct--

THE COURT: Sustained.

Q What is your present understanding concerning the question of whether you will or will not be prosecuted in this case?

A My present understanding is I will not be prosecuted in this c se.

Q Now, directing your attention to the fall of 1969, there came a time when you got into economic difficulties during that period, isn't that correct?

A Yes, it is.

Q And you were being threatened with eviction from your apartment?

A Yes, on several occasions.

Q And you asked Al Segal to help you out in paying the rent on your apartment?

MR. WALKER: Objection. I don't see the relevance in this.

THE COURT: I don't either. Do you represent that it will lead to --

MR. DOYLE: Yes, I think it will lead to something, your Honor.

THE COURT: All right. Preliminarily, answer.

A I don't recall that specifically, sir, no.

Q Did he help you pay the rent for your apartment in late 1969, early 1970?

A He gave me some money from time to time. I don't remember him specifically helping me pay the rent.

Q He did give you some money from time to time?

A Absolutely.

Q And the purpose of that was to help you out in

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your economic difficulties?

A Yes, sir.

Q Now, during the period from December 21, 1969, until after New Year's, is it not a fact that you and your wife and family and Mr. Segal and his wife and family spent that period of time down in Miami at the Doral Hotel?

A Yes, sir, it is.

Q And were you and Mr. Segal down there continuously during that period?

A Yes, sir. No, sir. Actually, I believe -- I believe we came back to New York in mid-week or at least I did. I believe we both did.

Q What is your recollection with respect to Mr. Segal?

A I'm not certain, sir.

Q How much time did you spend in New York?

A Several days mid-week, from Tuesday to Friday or what have you.

Q Now, directing your attention to your testimony on direct examination about directed trades, did I understand that to be a situation in which there is a buyer and a seller who go to the same broker and the broker takes in the stock from the buyer and then sells it to -- takes in the stock from the seller and then sells it to the buyer at a slight

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increase in price; is that essentially the relationship that you described?

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A Actually in the other. The buyer would usually come first, but, yes, essentially.

Q So the broker earns -- does the broker earn a commission in that situation?

A The broker earns a spread between the price he buys at and the price he sells at.

Q He earns a markup?

A Yes, sir.

Q And the buyer obtains the price he bargained for and the seller obtains the price that he bargained for, isn't that correct? That is the seller obtains the price that he --

A The seller's price would be determined by the buyer's price, which will be a little bit less, so the broker makes the difference.

Q Now, Kippen & Company, did you look over any documents in preparing your testimony about directed trades with Mr. Walker?

A No, sir.

Q So you made no attempt to document your testimony in connection with this?

A No, sir.

Q So you are testifying essentially from your recollection of events that occurred five years ago, without having been refreshed by any documents? When I say "any documents," I mean specific business documents concerning trades such as confirmations, checks.

A That's correct, sir.

Q All right. Now, isn't it a fact that the Kippen & Company transaction was one where you simply bought stock in Montreal at a brokerage firm in Montreal, Mr. Segal paid for it, $9,000, and the stock was sold out before the delivery date; isn't that what actually happened in that Kippen situation?

A No. As I remember it, I bought the stock for Mr. Segal, in effect, as nominee.

Q Yes. He paid for it?

A Because he was looking for a broker.

Q Mr. Segal paid for the stock?

A I believe he paid a small portion of it. The reason it was sold out because the $9,000 was just a portion of the purchase price.

Q What was the amount due and owing on the stock?

A I don't remember, but I remember it to be substantially more than the $9,000 which was paid for.

Q Did Mr. Segal get any part of his $9,000 back?

He didn't, did he?

A I don't know. He would, unless the difference between the buy and the sell was more than the $9,000, I believe. No, he did not because the loss was more, because Kippen was asking for more money after it was all over.

Q He didn't recover anything from that transaction?

A No, sir, he did not because the broker's loss was more than the $9,000 which had been placed with the broker.

Q No, in no time during the conversations that you testified about on direct examination, as I understand it, did Mr. Segal attempt to obtain money from the arrangement that you testified you suggested with Howard and Zuber; is that a fair statement?

A No, sir, the whole object of that exercise was to obtain money, wasn't it?

Q Well, your testimony was that they would go out to see if they could resolve this situation. My question is, was money discussed at all in these conversations?

A I wasn't present for the specifics of the conversations in the great detail, but, yes, the whole object was to go out and recover money from these people who had, in effect, been stealing from Mr. Zuber.

Q You know Mr. Segal didn't gain a penny from this transaction?

A I don't know.

Q There was no money paid to Mr. Segal in your presence?

A That's correct.

Q There was no money paid to Mr. Segal, to your knowledge, was there?

MR. WALKER: Objection. There wasn't any in his presence.

THE COURT: Sustained.

MR. DOYLE: One moment, your Honor.

(Pause.)

Q Mr. Gardner, did Mr. Segal open an account, to your knowledge, on behalf of Kelli, Jackson & Scott in Economic Planning shortly after meeting Mr. Karfunkel through your introduction?

A I'm familiar with Kelli, Jackson & Scott. I remember making the introduction, but I do not specifically remember him opening that account at Economic Planning. No, sir. That is not to say it didn't happen. I have no recollection.

Q You have no knowledge one way or the other as to whether it happened?

A I have no recollection of it.

Q Now, what was your net worth in September, 1969, approximately?

A In September, '69? September, '69?

Q Just to the best of your recollection. Just approximate it.

A I don't know.

Q Did you have a positive net worth at that time?

A Yes, sir, absolutely.

Q Had your net worth become negative by the e. of the year?

A Yes, sir.

Q Did Mr. Segal tell you during the course of the conversations that you have testified about during mid and late December and January and February, 1970, he made substantial purchases of Pioneer Development Corporation stock?

A Well, I witnessed what was happening there.

Q And he was purchasing stock, wasn't he, in substantial quantities?

A When stock came into the market he would buy it, yes, sir.

Q He was buying it, that's right. He also told you that Pioneer Development Corporation was a good company.

and had a good mining claim that it had acquired, didn't he tell you that?

A He told me his story of the mine many times, sir.

MR. DOYLE: Thank you. Nothing further, your Honor.

CROSS EXAMINATION

BY MR. WINOGRAD:

Q Mr. Gardner, is your attorney in court here this afternoon?

A Yes, sir.

Q Is that the gentleman sitting here in the first row?

A Yes, sir.

Q And is he the gentleman that arranged this deal for you, this package deal for you?

MR. WALKER: Objection.

A I wouldn't call it a package deal.

Q Well, would you consider this--

THE COURT: Did he make the arrangements with the United States Attorney?

THE WITNESS: Yes, sir. Thank you, your Honor.

Q And are you happy with these arrangements?

A No, sir.

Q You would like it to be a little better, wouldn't

you?

A I always like things to be a little better, sir.

Q And would you like to help yourself a little more?

A No, sir.

Q You would like to the FBI, wouldn't you?

A No, sir.

Q Did you ever lie to the FBI?

THE COURT: It's repetitive.

MR. WINOGRAD: I am getting into something else.

A The circumstances were unusual, sir. It was the first time I had been arrested and it was--

Q Circumstances were unusual in that you were trying to help yourself, wasn't that so?

A No. I think I was actually trying to protect other people, but I straightened out the story and told the truth and was prosecuted on the case, anyway.

Q Were you prosecuted for making that false statement to a government official?

A I was not.

Q Did you ever expect to be prosecuted for making a false statement to a government official?

A No, sir, I wasn't under oath when I made the statement.

Q You know making a false statement to an FBI agent is a violation of the United States Code, do you not?

A Yes, sir. I went and straightened it out afterwards and told the truth.

Q How long afterwards, sir?

A Shortly afterwards, sir.

Q What is shortly afterwards?

A A matter of a week or so.

Q Week or so. When was the time -- when was the first time that you were aware that this package situation or arrangement was being worked out on your behalf with the federal government?

A I don't know of any package situation, sir. It doesn't include any of my problems, so I don't know how you can refer to it as a package situation.

Q Let me ask you this: I am referring to the fact that you won't be prosecuted in certain cases which are now pending. You were toldabout that. You are aware of that, aren't you?

A Only the cases that I told the government about, the cases enumerated specifically in that letter.

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Q Those are the cases I am referring to.

A No other cases.

Q You are aware you are not going to be prosecuted

on those, isn't that true?

A Yes, sir.

Q And you are aware further that these sentences are going to be attacked in a motion to reduce, isn't that correct?

A Of course. That is my right, isn't it, sir?

Q Sure, it's your right. And isn't it a fact, sir, that you expect them to be reduced?

A I hope. I don't expect.

Q I see. When you lied to the FBI did you lie about various people?

A No, I just left people out. I made up a fictitious person.

Q I see. You left people out. And did you put people in?

A A fictitious person.

Q One fictitious person?

A Who didn't exist, right.

Q Who didn't exist. And you sent the FBI on a wild goose chase, didn't you?

A I might have tried. They didn't go on one.

Q They didn't go anywhere?

A They didn't go on a wild goose chase.

Q You knew they could never go anywhere, isn't that

true?

A I don't know what you mean by that. They got the facts in the case.

Q Did you lie about dates to the FBI?

A No.

Q Did you lie about places of meetings?

A No.

Q With this fictitious person?

A No.

Q Do you like Jack Levine?

A I haven't thought about it. I haven't seen Jack Levine for a long time. I don't dislike Jack Levine.

Q Isn't it a fact that you and he had an argument?

A I would say we did. I don't remember what it was.

Q Isn't it a fact he called you a liar and a thief?

A Not to my recollection, no.

Q Now, sir, this arrangement which was incorporated in the form of a letter, which I believe you saw, did you not?

A Yes, I did.

Q How recently was that done?

A Isn't it dated?

Q I am asking. Do you know?

A Maybe a month ago. Five weeks.

Q And did another letter have to be sent to you because you violated certain terms of this letter?

A Absolutely not.

Q Wasn't there an amendment to this letter?

A Yes.

Q Excuse me?

A Yes.

Q What did that have to do with?

MR.WALKER: Objection, your Honor. May I see your Honor at the side bar?

THE COURT: Let me see the letter. Perhaps it won't be necessary.

(Handed to the court.)

THE WITNESS: It had to do with --

THE COURT: No.

THE WITNESS: Sorry.

(Pause.)

THE COURT: All right, I will hear you, Mr. Walker.

(Side bar.)

MR. WALKER: I was given this letter and passed it out as 3500 material. I was told that I should not have done so without deleting the name and it was too late. It is the name that concerns me because this is a matter

that is currently under investigation at the present time and--

MR. WINOGRAD: I will leave that out. I am not concerned about the name.

MR. WALKER: All right.

THE COURT: All right.

(Open court.)

MR. WINOGRAD: Would you read the last question, Mr. Reporter?

(Question read.)

Q Other than the name, would you tell us about that?

A The amendment said that I would no longer, in any way, form, participate in the activities that I had told the government about relative to these cases where I was cooperating.

Q And that was after this letter of a month ago?

A Well, no, it was discussed at the same time -- it became effective at the very same moment that the letter became effective. Just for one reason or another it was not incorporated into the original letter, so it was written up later on, but it became effective at the same time.

Q What kind of work do you do today, Mr. Gardner?

THE COURT: What are you doing now? What kind of work?

THE WITNESS: I'm selling oil and gas, tax plans, doing several other things where my time can be my own because I have been spending a lot of time down here, your Honor.

Q Well, do you have a business address?

A Yes, I do.

Q What is it, sir?

MR. WALKER: Is that necessary, your Honor? We object.

THE COURT: Sustained.

Q Do you have a sign or plague outside of your office?

A Yes, sir.

Q What does it say?

MR. WALKER: Objection. Irrelevant.

Q Well, sir, does it say "S. Michael Gardner"--

THE COURT: Overruled. Go ahead.

Q What does it say, sir?

THE COURT: Can you put it to us?

MR. WINOGRAD: Yes.

Q Does it say, "S. Michael Gardner, Investments Consultant"?

A No. It has the words "Consultants, Investments," but it doesn't say "Investment Consultant."

Q Tell us what it says.

A My name and on separate levels the word "Consultants" and the word "Investments."

Q Is that a violation of your agreement with the government?

A No, sir.

Q In other words, you can still consult people with respect to their investments?

A I am not selling any securities in violation of any of my agreements with the government.

Q You indicated just before that agreement was left out because you had been spending so much time here. How much time have you spent with Mr. Walker?

A I didn't indicate that agreement had been left out because I had been spending so much time here.

Q What is the reason?

A I don't know why it was left out. It just wasn't put in initially, but it became effective at the same time, after the rest of the agreement was drawn. Subsequently it was put in writing as an amendment to the original agreement.

Q How much time have you been spending with Mr. Walker in the last two months?

A I met Mr. Walker here one Saturday for about, oh, maybe three hours two hours, three and a half, three hours

on a Saturday morning, and the next time I heard from Mr. Walker was yesterday, and I was here last night for a few hours. I did not find out I was going to testify in this case until yesterday, and I haven't seen Mr. Walker before last night.

Q In other words, prior to yesterday you didn't know you were going to be a witness in this case?

A That is correct.

Q And had you spoken to Mr. Siffert, Mr. Walker's associte?

A I met him for the first time last night.

Q How many hours did you spend with these two gentlemen last night?

A About four hours, three or four hours.

Q What time did you leave this Court House, sir?

A About 9.30, sir.

MR. WINOGRAD: I have no further questions.

CROSS EXAMINATION

BY MR. NEWMAN:

Q Mr. Gardner, back in December of 1969 and January of 1970 you knew Howard Finkelstein in a social way?

A Yes, sir.

Q You had had dinner once or twice, your wife and him and his wife? Is that correct?

A Yes, on one occasion specifically that I can remember.

Q About Christmastime of 1969 you were aware that Mr. Finkelstein was going to take his wife and two

children to Disneyland in Los Angeles? Is that correct?

MR. WALKER: Objection. It has to be hearsay and it is irrelevant.

MR. NEWMAN: It is very relevant, your Honor.

THE COURT: I will sustain it as to form.

Q Did you become aware that around Christmastime Mr. Finkelstein was going to be in Los Angeles with his family? Did he ever tell you that?

A I don't recall, sir. I seem to remember something about his going to Disneyland some time or other.

Q About Christmas? The end of the year?

A I don't recall, sir.

Q That was just about the time you suggested to Mr. Segal that Mr. Finkelstein go to Reno? Is that correct?

A In December, yes, sir, late December.

Q You have never testified before the grand jury in this case?

A No, sir.

Q You never testified in front of the SEC in this case? Is that correct?

A I don't remember ever testifying before the SEC, either.

MR. NEWMAN: Thank you very much.

MR. PAPE: No questions of this witness, your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Gardner, Mr. Doyle asked you a question about a directed trade and I believe he said that it was a trade in which a broker was acting between two other individuals, a buyer and a seller?

A Yes, sir.

Q How does a directed trade differ from an undirected trade?

A Just that the person handling the order for the client is going to go to a specific broker as opposed to going into the market in general.

Q What is the reason for doing something like that?

A There could be several, but usually so that the trade does not get lost, in effect. If a thousand shares were being bought and being spread over the market or being bought anywhere, the impact of it cannot be controlled. If it is being bought through one specific broker it would allow someone to sell a thousand shares. If it was being sold in general it would not be the same.

Q What is the advantage of controling the trade?

A To be able to have for yourself the impact of that trade, to be able to fill the other side of the order for yourself.

Q What is a reason for doing that?

MR. DOYLE: Objection, your Honor. I think it is repetitious.

THE COURT: Well, I don't think the witness' answer is very clear.

Go ahead. Overruled.

A Well, if someone had stock that they were trying to sell and there were buy orders coming in they would try to direct the buy orders to a broker where they can then sell the stock, rather than the buy order going into the market in general where the order can get lost, so to speak, where they would not have an opportunity to fill it. It is a way of creating money.

Q Mr. Doyle brought out on cross-examination the Kippen & Company transactions?

A Yes, sir.

Q Did you have a conversation with Mr. Segal concerning why he wanted the stock purchased through Kippen & Company?

A He did not specifically want the stock purchased through Kippen & Company; he just needed a broker at that

point to go in and purchase stock from someone else specifically.

Q Did he tell you why on that occasion?

A At that point he had bought a lot of stock and was having trouble paying for it and he was -- I believe he had to sell out somewhere, the stock was being sold out, and he needed pickup at another broker so it would not hit the market generally.

Q What would have happened if it hit the market?

A It would have gone down.

Q Did you discuss with Allen Segal on any occasion why he was purchasing stock?

A There was general conversation back and forth on many occasions.

Q What was said on that subject?

A That he was purchasing stock, because stock was being sold in the market.

In the beginning, as I say, he didn't know where it was coming from, but then he pinpointed it, so he had to stop the stock coming in.

THE COURT: So that the stock would not drop the price?

THE WITNESS: Yes, sir.

Q Mr. Gardner, you were asked on cross-examination

concerning a "package" with the Government.

Do you consider that you have any package with the Government?

A No.

Q Had you been told that with respect to all matters, with the exception of those matters which you brought to the attention of the Government and with the exception of Pioneer, that you would be prosecuted to the fullest extent?

A Yes, sir.

MR. WALKER: I have no further questions.

RECROSS EXAMINATION

BY MR. DOYLE:

Q Didn't Mr. Segal tell you repeatedly that he was buying Pioneer because he thought it was a good investment?

A No, sir.

Q Didn't he tell you that it had good assets and was a good company repeatedly?

A I heard the story about the mine.

Q Which was a very favorable one?

A Yes, sir.

MR. DOYLE: Thank you.

No furthe questions.

RECROSS EXAMINATION

BY MR. WINOGRAD:

Q As you sit here do you ever expect that you are going to be prosecuted for these crimes that you committed up to this very day?

A Yes, sir.

Q You do?

A Yes, sir.

MR. WALKER: May I have some redirect based on that last question?

REDIRECT EXAMINATION

XX BY MR. WALKER:

Q Is there an indictment pending against you in this Court House?

A Yes, sir.

Q Is that the Stern-Haskell case?

A Yes.

Q Have you been told that you would be prosecuted in that case?

A Yes, sir.

RECROSS EXAMINATION

BY MR. WINOGRAD:

XX Q Are you a witness in that case?

A I am a defendant.

Q Will you be a witness in that case for the Government?

A Against myself?

Q Are you the only defendant?

A No, sir.

Q Who are the other defendants? Are there other defendants?

A About 10.

Q Will you be a Government witness in that case?

A I have no plans of it at this point, sir.

Q Never been discussed with you?

A That is correct.

BY MR. GREENBERG:

Q You were also told that you were going to be prosecuted in the Pioneer case?

A Yes.

Q And you were not?

A No.

MR. GREENBERG: Nothing further.

MR. WALKER: I have no further questions.

THE COURT: You are excused.

(Witness excused.)

- -

ROBERT MEYER, called as a witness By the Government, being first duly sworn, testified as follows;

DIRECT EXAMINATION

BY MR. WALKER:

Q How are you presently employed, sir?

A I am president of United Textile. I am in my own business. I am president of United Textile and Fashion Novelty Corporation.

Q Mr. Meyer, directing your attention, sir, to 1969, how were you employed at that time?

A In the same capacity.

Q Did you know an Abner Berman?

A Yes, I did.

Q Do you recall, sir, a day when you were with Abner Berman and a stock called Pioneer Development Corporation was discussed?

MR. DOYLE: Objection.

THE COURT: Sustained.

Yes or no.

A Yes.

Q Sir, would you tell us what you did on that day at that time?

A Purchased 1200 shares of Pioneer Development

Corporation during the discussion with Mr. Berman.

MR. DOYLE: Would you speak a little louder?

THE WITNESS: I purchased 1200 shares of Pioneer Development Corporation during the discussion with Mr. Berman.

MR. DOYLE: Would you speak a little louder?

THE WITNESS: I purchased 12000 shares of a stock called Pioneer Development?

MR. WINOGRAD: Objection.

THE COURT: Overruled.

Q Did you continue to purchase Pioneer Development Corporation after that?

A Yes, I did.

Q Specifically, sir, I show you a statement, 132-A for identification, and ask you if this is a statement of purchases that reflects purchases by you of Pioneer Development Corporation at Shields & Company?

A Yes, it does.

MR. WALKER: I will offer this document in evidence.

MR. DOYLE: No objection as to competency. I think we have a relevance problem. I don't see how it has anything to do with the defendants.

THE COURT I will take it subject to connection.

(Government's Exhibit 132-A was received in evidence.)

xx Q Did you purchase this stock on November 10, 1969, 1200 shares?

A Yes, I did.

Q Did you purchase another hundred shares on November 21, 1969?

A Yes.

Q And on November 30 of 1969 did you purchase 1300 shares?

I'm sorry. That was your total position at the end of the month? Is that correct?

A Yes.

MR. DOYLE: What is the total position?

THE COURT: 1300 shares.

Q Directing your attention now to the month of December, did you purchase 200 shares on December 1?

A Yes, I did.

Q Was that purchase at a price of $7.50 a share?

A Yes, it was.

Q For $1529?

A Yes.

Q And during the month of November your first purchase, 1200 shares, was at $9.25 a share?

A Yes, it was.

Q Was that for $11, 295?

A Yes, sir.

Q Was that second November purchase of 100 shares at 7-3/4?

A Yes.

Q For a price of $789.75?

A Yes, sir.

Q On December 11 did you purchase 200 shares of Pioneer Development at 6-3/4 a share for $1377.50?

A Yes, sir.

Q On December 11, did you purchase another 100 shares of Pioneer Development at $6-1/2 for $663.50?

MR. GREENBERG: Could we establish the relevance first?

THE COURT: We will take it subject to connection.

MR. GREENBERG: The document speaks for itself.

MR. WALKER: Could I read it to the jury?

THE COURT: You could have done it five minutes ago.

(Mr. Walker reads from Government's Exhibit 132-A in evidence to the jury.)

Q Now, sir, following these purchases did there come a time some time toward the end of December when you

took steps to find out facts about Bionex Development Corporation?

A Yes.

Q Would you tell the jury what happened? What caused you to do this?

A Well, I could not get any more information on the company itself, other than what Mr. Berman would tell me, and he gave me the name of some people that apparently were involved in the company and a corporate name to call to try and make an appointment to see them.

Q Sir, up to that point had you seen any registration statement or prospectus in connection with Bionex Development?

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A No, I had seen nothing.

Q Had you seen any official publication or [illegible] approved publication in connection with Bionex Development?

A No, sir.

Q Then what did you do following this conversation with Mr. Berman?

A He mentioned that I should try to see a Mr. Segal and gave me a phone number of a company to see.

Q Where did you go?

A To a company called -- I'm not sure of the

ms [illegible]

name -- Bona Bide Mortgage, or something [illegible] somewhere in the 60th Street area. I had an appointment to see a Mr. Segal.

Q What time of day [illegible]

A I think it was in the early evening, [illegible] 5.30-7.30 area. I don't have any exact [illegible]

Q Do you recall [illegible] to the office and would refresh your recollection [illegible] at the statement?

A No. I'm sorry, I [illegible] at this point.

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Q Who was in the office [illegible] Will you describe what you [illegible]

A It seemed to be an apartment-type office. [illegible] was sort of an entrance lobby and a large room [illegible] three desks in it and three or four people [illegible] of which I was introduced to as Mr. [illegible].

Q Sir, did you meet any other individuals in the office that you can recall?

A I think there was a Mr. Levy or Levine.

Q Mr. who?

A There were two or three people I was introduced to. One was Mr. Levy or Levine. I don't recall his name.

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Q Did you see those individuals at [illegible] time after this?

A Yes, I did one other time that evening. I went to a restaurant to have a drink or [illegible].

Q Do you see any of those individuals here in the courtroom? Do you see any of them here?

THE COURT: Stand.

THE WITNESS: (Standing) I see [illegible]. I think.

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Q Do you see anyone else?

A I think that is Mr. [illegible]. I'm not sure. I spoke to him once.

Q Which one?

A The check jacket. I can't [illegible].

THE COURT: Let the record note that he has pointed out Mr. Levine.

MR. WALDEN: Very well, your Honor.

Q Now, when you got to the office did you have a conversation with these gentlemen at that time?

A Yes.

Q What do you recall being said at the office. And let me stop you and see if you can identify whom you spoke to?

A Well, I did speak to a [illegible] because it.

ms [illegible]

Berman --

MR. WINOGRAD: Objection.

THE COURT: [illegible]

A -- I spoke to Mr. [illegible] who introduced me to Mr. Segal, just casual [illegible] Mr. Segal I was trying to [illegible] of getting some sort of accounting of the [illegible] had purchased stock in.

Q An accounting of the com[illegible]

A Some sort of a balance sheet or [illegible] the company.

THE COURT: [illegible]

THE WITNESS: Yes, sir.

Q Did you ask Mr. Segal for su[illegible]

A Yes.

Q What did he say?

A He said the documents are [illegible] the accounting firm has them and they should be out in the next few days, very shortly.

Q Sir, did you speak to him at [illegible] the stock? What the stock was like?

MR. DOYLE: Your Honor, can we [illegible] conversation? What did he say to you? [illegible]

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Q What was the conversation between you and Mr. Segal at that time?

A Well, the office was rather busy with a number of phone calls --

THE COURT: Just think. Then if anything else, was said? By whom? To whom? Just think about it a minute and then tell us what was said, not the office was busy, not people were on the telephone. What was said.

A There was very little said of a kind, concerning the company, because they were busy, and we went to a restaurant on the corner where we had decided "We'll sit and have a drink and discuss it from

Q How long, Mr. Meyer, did you stay in the office?

A 15 to 30 minutes, I would say.

Q Then did you go to a restaurant?

A Yes, I did.

Q What was the name of the restaurant?

A I think it was Lorraine's on the corner.

Q Sir, who took with you to Lorraine's?

A Mr. Levine, Mr. Segal and another couple of people. I don't know the names.

Q On the way over to Lorraine's did you have a

ms [illegible]

conversation with either Mr. Devane or Mr. [illegible]

A Yes, I did.

Q With whom?

A Mr. Devane generally [illegible] the company, and he more or less did [illegible] about it.

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Q What did he say?

A He thinks the company is going to be real from what he can understand of it, and I think it was a little chilly that night and we were glad to get there rather quickly to the restaurant.

Q Did you have a conversation with Mr. [illegible]

A Yes, I did.

Q Did you have a conversation with Mr. Devane before or after you got to Moriarty's?

A Just general. Nothing. Pleasantries before we got to Moriarty's.

Q After you got to Moriarty's did you have a conversation with him?

A Yes, I had a drink at the bar, and Mr. Devane came over and invited me to join him at a booth. [illegible] him certain questions about the company and how real the company was going to be very real.

Q Tell us exactly how as best you can recall what

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Mr. Segal said to you at that time?

A He felt the company would do well. There was some blocks of stock that were prohibiting the stock from going up. Some people were sold down the river on this -- however they call it, and this is the only thing, because the company is doing well and the [illegible] what was going on, there was a [illegible] coming through on that.

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Q What did he say about mobile homes?

A That they had a lot more of a Government contract that would be used on most of the smaller type of [illegible] home units and the [illegible] was also going to be [illegible]

He also said the plant would be in production very shortly and he felt the stock would do well, that it was a good situation.

Q Did he say anything more than that to you?

A Only that it should be profitable [illegible] on a profitable basis.

Q Did he say anything about production at that time?

MR. DOYLE: Objection, your Honor, he has already testified that he said something about production.

THE COURT: Overruled.

Did he say anything?

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THE WITNESS: Yes, I asked [illegible]

production. They could be produced [illegible] a much larger scale in a short period. The [illegible] additional funds [illegible] silver comes from, from the mine, to be efficient [illegible] ment.

Q Was anything said [illegible] of the company?

A On that they [illegible] should go up when the [illegible]

Q Did you ask him [illegible] earnings would come [illegible]

MR. DOULE: [illegible]

THE COURT: Sustained.

MR. WALKER: [illegible]

Q Would you tell us the [illegible] earnings?

A I asked what the company [illegible] he might anticipate per share earn[illegible] believe he estimate[illegible] exception that there would be good [illegible] production of the [illegible] mine and the [illegible]

Q Did you have any discussion [illegible] further discussion [illegible]

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A Very little conversation [illegible] -- it was more than a casual conversation -- it was only like a drink.

Q Why did you [illegible] ment, sir?

A Yes, I did.

Q What did you say about [illegible] say and to whom?

A I spoke [illegible] I told him, "I could not [illegible] If you don't feel it is a qualified [illegible] my loss and get out."

I had been out of the hospital [illegible] and maybe went a little bit overboard [illegible] to take my loss if you feel the [illegible] well enough and that would be it.

Q What was his answer?

A He felt the [illegible] he [illegible] area in a very short period [illegible]

Q Did he make any [illegible] should do in future transactions?

A He felt [illegible] was a good investment at the time.

Q Now, sir, [illegible]

do in connection with Pioneer Development Corporation?

A I went home and the next day I called Mr. Berman and said --

MR. DOYLE: Objection.

MR. WALKER: Just what you said.

MR. DOYLE: Your Honor, that is hearsay.

THE COURT: What did you say to Mr. Berman?

MR. DOYLE: It's not in the presence of the defendants.

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THE COURT: Just what you said.

THE WITNESS: I said to Mr. Berman that I didn't get very much information that qualified the purchasing of this stock that we had both done and I was not completely happy with the meeting and I just didn't like the situation and asked him if he could delve any deeper and I thought it would be proper for him to make a trip up there to speak to these people and see if he could find anything about it that I was not told.

Q What did You do in the market following that meeting?

[illegible] stock.

MR. DOYLE: May that be stricken?

THE COURT: Can you remember whether you bought

stock?

THE WITNESS: Yes. I had bought more stock after that. Whether it was the day after the meeting or not, it would be on my record.

Q Let me show you your records, sir.

A Yes, sir.

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Q What is your recollection?

A I bought some additional stock as the price was going down.

Q Will you point to the particular [illegible] on this sheet where you bought additional stock?

A I would say I bought it January [illegible] down through January 22nd.

MR. WALKER: May I read those portions to the jury, your Honor?

(Mr. Walker reads from Exhibit 132-A to the jury.)

BY MR. WALKER:

Q Mr. Meyer, did there come any further time when you had an additional conversation with any of these individuals?

A Yes.

Q Was that after these purchases which I just read to the jury?

A Yes.

Q Where did you have this conversation?

A Well, I went to the same building and there was no one there. So I went to the restaurant where I had seen them previously in the hope that I would find them. I did.

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Q Whom did you find there?

A Mr. Segal.

Q What was the conversation? I want you to be as clear as you can about the conversation that you had with Mr. Segal at that time.

A Mr. Segal again felt he had a great deal of faith in the company, that they would get the situation going again, the corporation, the stock price should go up, that there was still this block of stock overhanging the market that was keeping it down, some people out West that were depressing the market.

Q Sir, this was subsequent to January 22 1970, this conversation?

A It was after that point, yes.

THE COURT: How long do you expect to be on direct?

MR. WALKER: Not very long.

THE COURT: What do you mean?

MR. WALKER: Five minutes.

Q Now, sir, did you purchase stock at Orvis Brothers?

A Yes.

Q So you were purchasing stock at the two brokers? Is that correct?

A Yes.

Q I show you Government's Exhibit 105 for identification and ask you if you can identify that? Is that your account statement at Orvis?

A Yes, it is.

MR. WALKER: I offer it.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibit 105 was received in evidence.)

xx Q Now, sir, following this second conversation that you had with Mr. Segal did you purchase more Pioneer stock?

A It would be on the record if I did. I purchased. It had gone rather low.

Q Directing your attention, sir, to March, did you purchase Pioneer stock in March of 1970?

A Yes, I did.

Q Were those purchases on March 2 and March 18?

A Yes, they were.

Q 500 shares on March 2 and 800 shares on March 18?

A Yes.

Q What was the price at that time? Around $? to $1 a share?

A Yes, it was.

Q Sir, do you know how much money overall you lost in Pioneer stock?

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MR. DOYLE: I didn't hear.

THE COURT: How much money overall did you lose in the stock?

A A lot of money. I don't know. $40,000. Maybe 50, possibly more.

Q It would be reflected on these statements?

A Yes.

Q If I told you that the records were to some $33,000, $34,000, would that be accurate?

A You have the records. Yes, it would be.

MR. WALKUP: The records speak for themselves.

Q Did you mention Pioneer stock to other individuals?

A Yes, I did.

Q Who were those individuals?

A Howard Nornberg, my father. Mrs. Howell, Dr. Moray -- I don't remember any other parties.

Q Do you know whether any of these individuals made purchases?

A Yes.

Q I show you Government's Exhibit 3074 for identification and ask you if this refreshes your recollection as to any other individuals that you recommended stock to?

A Yes, Abraham Glass.

MR. DOYLE: What was that name?

THE WITNESS: Abraham Glass. I think that is the only party, or his wife.

Q Sir, at any time during your conversations with Mr. Segal did Mr. Segal tell you that he had sold or had been selling huge quantities of Pioneer stock?

A No, sir.

Q At any time during your conversations with Mr. Segal did Mr. Segal tell you that he had sold many thousands of shares of Pioneer stock at Haren & Company and Orvis Brothers?

A No, sir.

Q Did Mr. Segal tell you only that he had bought stock?

A Yes.

Q Did you rely on Mr. Segal's statements that he had bought stock in conducting your own affairs and making purchases on your own?

A Yes, with the exception of my [illegible] broker at Orvis Brothers and he did confirm the fact apparently that Mr. Segal did have stock at that firm.

Q Was that broker Gus Kostos?

A Yes.

Q Was that the broker through you whom you traded at Orvis?

A No.

Q Who was the broker you traded with at Orvis?

A The president of the company. I think his name is Bill Anderson.

MR. WALKER: Your Honor, I have no further questions.

THE COURT: We will recess now until tomorrow morning at 10 o'clock. Please try to be prompt.

Good night. Don't talk about the case; don't let anybody talk to you about it.

(Jury excused.)

MR. WALKER: Your Honor, I have a group of witnesses in the witness room and I think it is going to be necessary for your Honor to speak to them to make sure

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they are all here tomorrow morning.

May I bring them in?

THE COURT: Yes.

(Witnesses make their appearance in the courtroom.)

THE COURT: All right, Mr. Walker, what is the problem?

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MR. WALKER: Your Honor, I was trying to impress upon the witnesses the necessity of their being here tomorrow and I think it would be appropriate if your Honor directed that the witnesses be present tomorrow.

THE COURT: Are they all under subpoena?

MR. WALKER: Certain of them are and others are not. Others are appearing voluntarily.

THE COURT: Well, you must all be here tomorrow. I direct that you be here so that we are prepared to go ahead. There are 40 people here and we can't wait.

MR. KOSTOS: Do you have an idea how long this will take tomorrow?

THE COURT: I have no idea. I will see that you are not here any longer than you have to be.

MR. WALKER: I have told the witnesses, your Honor, that the Court would not be sitting the afternoon.

THE COURT: That is right. We will not be sitting beyond 2.15 in this case.

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MR. EADE: The defendant Anthony Scardino would move for an order pursuant to Rule 14 of the Federal Rules of Federal Procedure for severance in this case. As grounds therefore the defendant Anthony Scardino offers proof of the following evidence: that if the defendant Alan Segal were not a defendant in this case, Mr. Scardino would call him. The testimony of Mr. Segal would be that other than one brief introduction by Mr. Scardino of Mr. Segal to Burney Acton and Michael Clegg, in none of which Pioneer Development Corporation was not discussed, that Mr. Scardino was never at any subsequent meeting at which were present Mr. Segal and Mr. Acton or was never present at any subsequent meeting at which Pioneer Development Corporation was discussed.

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I have been advised that Mr. Segal does not intend to testify in this trial and if I call him in this trial he would refuse to testify.

I have been further --

THE COURT: Who advised you of that?

MR. DOYLE: Your Honor, the situation is that my motion with respect to the prior convictions really is decisive on it; it has been denied, subject to renewal but if I don't get a favorable ruling on it prior to having to decide whether he should take the stand, I will not put him

on the stand.

MR. PAPE: As further grounds for my motion, I have been advised by defendant Zuber, in the presence of the defendant Zuber's counsel, that if he were called as a witness --

THE COURT: If who were called, Zuber's counsel?

MR. PAPE: If the defendant Zuber were called as a witness for Anthony Scardino, he would testify that at a meeting in Reno at which were present Mr. Scardino and Mr. McKibbon, Mr. McKibbon confessed to Mr. Zuber that Mr. McKibbon had sold shares of Pioneer stock, had kept the proceeds, and that Mr. Scardino knew nothing of the sale.

I have been advised that he is willing to testify that Mr. Zuber would testify, if called as a witness, in this trial, for Mr. Scardino.

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MR. WALKER: Your Honor, may I say something?

THE COURT: Yes.

MR. WALKER: First of all, the testimony of Mr. Zuber that Mr. Scardino knew nothing of the sale would be incompetent. It would have to be based on some conclusion or lack of conversation, and that is the only portion of that which even tends to be exculpatory.

Secondly, there is absolutely no offer at this

jkhc

time that Mr. Zuber will not testify. In fact, my understanding from his counsel is that they intend to call him to the stand, subject to the possible disposition of a pending motion that may be forthcoming concerning my jury conviction of Mr. Zuber, which my understanding is was thrown out because the law was changed.

THE COURT: Well, I deny the motion at this time. It is premature.

MR. PAPE: Thank you.

THE COURT: Enter alia.

(Adjourned to 10 A.M., November 6, 1974.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
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Alan Weinberger				
Ben Cohen	837	837		
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Francine Zaal	841	842		
Dwain Knigge	872	873		
George T. Parris	874	883	886	
Sol Finger	888	889		
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Michael Gardner	893	894		
Robert Meyer	896			

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EXHIBIT INDEX

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22-A	
22-B through 22-H	

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	1-G-2		0
	1-X		5
	29		2
	105		3
	Defendant Scardino		
	A		

UNITED STATES OF AMERICA

vs. 74 Cr. 908

HOWARD FINKELSTEIN, et al.

New York, December 6, 1974;
10.10 o'clock a. m.

(Trial resumed.)

- -

(Jury in box.)

R O B E R T M E Y E R , resumed.

MR. WALKER: Your Honor, yesterday I was completing direct of this witness. I would like to ask a few more questions at this time.

THE COURT: All right.

DIRECT EXAMINATION (Continued)

BY MR. WALKER:

Q Mr. Meyer, did you make any efforts on your own, apart from the conversations that you had with Mr. Segal and one instance Mr. Levine, to find out about the company?

A Yes, I did.

Q And what did you do?

A I called the transfer agent in Nevada. I think it was termed the transfer agent or the register, who handled

the registration of stock. I also tried to contact, I think it was Mr. Crebbs in California.

Q Who is that, Clegg?

A Clegg. I'm sorry. I think that was the name. He, I understood, was the president of the company.

Q Did you meet with any success?

A I had no success whatsoever. I eventually tracked it back down to Florida where I got an answer by a girl once and after that the phones were disconnected.

Q Now, sir, I show you three confirmation slips, Government's Exhibit 106-D, 128 for identification and 121 for identification, ask you to look at them.

A Yes.

Q Did you receive copies of these three confirmation slips in the mails?

A Yes, they are all confirmations.

Q And did you receive confirmations in the mails in respect of every purchase that you made of Pioneer?

A Yes, I did.

MR. WALKER: I offer these three documents.

MR. DOYLE: No objection.

(Government's Exhibits 106-D, 121 and 128 were received in evidence.)

xx Q Now, Mr. Meyer, were you ever told by either

Mr. Segal or Mr. Levine the first day that you met them that the company had no revenues?

A No, I was --

MR. DOYLE: I object to this as going over the same ground we covered yesterday. I think it is repetitious.

THE COURT: Sustained.

MR. WALKER: Your Honor, I believe my sole question yesterday related to whether or not Mr. Segal was selling stock, not other matters.

MR. DOYLE: Your Honor, he elicited an entire conversation and now he is asking what wasn't said. I think it is repetitious and a waste of time.

MR. WALKER: I think it is relevant in the context of this case.

THE COURT: I will allow it. It should have been done the first time around, Mr. Walker.

MR. WALKER: Yes, your Honor.

Q Mr. Meyer, did Mr. Segal or Mr. Levine at any time tell you that the company had no revenues?

A No, Mr. Segal never said that.

Q Were you ever told by either of them that the company had no earnings?

A No.

Q Were you ever told by any of them that there

had been no commercial production of anything by that company?

A No.

MR. WALKER: I have no further questions at this time.

CROSS EXAMINATION

BY MR. DOYLE:

Q Mr. Meyer, my name is John Doyle and I represent the defendant Alan Segal.

Would it be a fair statement, Mr. Meyer, to say that Mr. Segal in his conversations with you was not purporting to be a spokesman for the company, Pioneer Development Corporation?

MR. WALKER: Objection, your Honor.

THE COURT: Sustained.

MR. DOYLE: Let me rephrase it.

Q Did Mr. Segal say to you, directly or indirectly, that he was either an officer or a representative of the company itself in his conversations with you?

A He did not represent himself as an officer.

Q He was an investor in the company stock, isn't that what he basically represented himself to you as?

A I would say that he was very close to the company, but he did say he was an investor.

Q He said he was an investor?

A Yes, he did.

Q Now, directing your attention to the chronology of the events as you described them, as I understand it, you related your first meeting with Mr. Segal to a group of purchases of Pioneer stock that commenced on January 6, 1970, and then continued on into February and March of 1970; is that correct, sir?

A You have the record. I don't know the exact dates on there.

Q Let me rephrase that.

Is it correct that you testified yesterday that after or shortly after your conversation with Mr. Segal there was a series of purchases beginning January 6th and continuing on; is that a fair statement?

A I think it is a fair statement, yes, sir.

Q And those purchases were all of Pioneer stock as it was on the way down, isn't that correct?

A Yes, it was.

Q And in the area of investing in securities, isn't that what is called averaging down?

A Yes.

Q Now, would you explain to the Court and jury what an investor is doing when he is averaging down a

stock?

A I would say if you are averaging down, you believe that the stock will go back up, so you bid in at a higher area as the price goes down in the marketplace, still feeling the stock might be a good purchase, and eventually recouping your higher original cost of the stock, you might average out to a lower price of even get even with the stock.

Q So that eventually if the stock did go up, your average cost would be, instead of 6 or 7 dollars it would be 2 or 3 dollars?

A That's correct.

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Q Mr. Segal told you that he was buying the stock at this period of time also, didn't he?

A Yes, he did.

Q You understood that this stock was a speculative stock, did you not, sir?

A As an over-the-counter issue, yes.

Q Do you recall that Mr. Segal mentioned the name of a company, Precise Power, in connection with the mobile heating units? Does that name mean anything to you?

A No, sir.

Q Did he mention Mr. Sheldon Lamb in connection with the mercury mine?

A Yes, he did. I recall a Lamb name. I don't recall if it is Sheldon.

Q Did he tell you that Mr. Sheldon's brother was the Sheriff of Las Vegas?

A Yes.

Q And had been for many years?

A Yes.

Q And you attempted to reach Sheriff Lamb, did you not?

A Yes.

Q And he told you that Lamb's other brother was a senior state senator in Nevada?

A That is correct.

Q Your efforts to reach those people didn't turn out to be successful?

A Yes.

Q And quicksilver is synonymous with mercury?

A Yes.

MR. DOYLE: Nothing further, your Honor.

MR. WINOGRAD: No questions.

MR. NEWMAN: No questions.

MR. KIRSCHNER: No questions.

THE COURT: You are excused.

MR. SIFFERT: The government calls Robert Kelliher.

R O B E R T K E L L I H E R, a witness called on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIFFERT:

Q Mr. Kelliher, by whom are you employed?

A Guaranty First Trust Company in Waltham, Massachusetts.

Q How long have you been so employed?

A Three months.

Q What is your position?

A Assistant vice president commercial loans.

Q As assistant vice president of commercial loans are you familiar with the books and records of the Guaranty Bank?

A Yes, I am.

Q Was the Guaranty Bank in 1969 called the Guaranty Trust Company?

A Yes, it was.

Q I show you Government's Exhibit 28D for identification and ask if you can identify that.

A Yes.

Q Was 28D kept in the regular course of business?

A Yes, it was.

Q Was it the regular course of business to keep this document?

A Yes.

MR. SIFFERT: I offer it in evidence.

xx (Government's Exhibit 28D received in evidence.)

Q There are some codes on that document. Could you explain to the jury precisely what this document is?

A The document is a ledger of loan, a liability ledger.

Q And the name on the upper left is what?

A Leonard Close.

Q Was he the person to whom the money was loaned?

A Yes.

Q And the name on the upper right?

A Alan Segal.

Q What does "GTY" mean?

A Guaranteeing the loan.

Q I will read a portion of it to the jury and then ask you some questions about it. The first entry is: Note date 8/28/69; the amount is $10,000; the term is 90 days, the unsecured amount is $10,000, and the due date is 11/26/69.

Could you explain what that means?

A On 8-26-69 there was a secured loan given for 90 days to Mr. Close.

Q And on 9-12-69 was that loan increased by $15,000 for a total of $25,000?

A Correct.

Q And on 9-16-69 there is another entry under collateral marketable securities, the amount of loan $40,000, secured $40,000, unsecured $25,000, total $65,000.

Does that mean that as of September 16, 1969, there was a loan in the amount of $65,000, $4,000 of which was secured by marketable securities?

A Correct.

b2 Q Now, there are some entries, 12-9, in the amount of $9,980 under payment. Is that the first payment that is indicated here?

A Yes.

Q And the amount under total is now $55,020. Does that mean that the loan was reduced from $65,000 to $55,020?

A Yes.

Q Subsequently there is an entry on 12-17, payment $15,000, plus $40,000 secured, total $40,000. Could you explain that?

A At this particular point the $15,000 and the $40,000 were put together in one note, which is a demand note, to give a total liability of $55,000, demand secured note.

Q So at that point the note was no longer a time note, it became a demand note?

A Correct.

Q Are there payments reflected here on that loan?

A Yes.

Q How many payments and in what amounts and on what dates?

A There are two payments, one on 8-20-70 in the amount of $7,820, and on 8-14 there was a payment

of $4,925.

Q Now, looking at this document, can you tell us what the marketable securities were that secured the loan?

A By this document alone I could not tell.

Q I show you Government's Exhibit 28E for identification and ask if you can identify that.

A This is the collateral that was --

Q Just can you identify this document?

A Yes, I can.

Q Is it the normal course of business to keep and maintain such documents?

A Yes.

Q Was this document kept and maintained in the ordinary course of business?

MR. DOYLE: Your Honor, we will stipulate to this.

MR. SIFFERT: I will offer it.

xx (Government's Exhibit 28E received in evidence.)

Q Now, referring to 28E just offered and received in evidence on 12-19-69, what is indicated?

A 2,000 shares of Pioneer Development Corporation was pledged against the loan.

Q Is that the same date that the loan was transformed from a time loan to a demand loan, referring to 28D? Is that 12-19 here and 12-15 here?

A Yes.

Q Can you explain why there is a discrepancy?

A Because they may not have been posted at the exact time. The date of the securities posted to this ledger does not necessarily have to be the exact same date that the note itself was pledged to the liability ledger.

Q I show you Government's Exhibit 28L and ask if you can identify it.

A Yes.

Q Is that made and kept in the ordinary course of business and was it --

MR. DOYLE: We will stipulate, your Honor.

xx (Government's Exhibit28L received in evidence.)

Q I show you Government's Exhibit 28G and ask if you can identify it.

MR. GREENBERG: We can save time if we just identify each document.

Q Can you identify it?

A Yes, guarantee of Alan Segal, Guaranty Trust Company.

THE COURT: Maybe if you show all these documents to counsel, they will stipulate.

MR. SIFFERT: We already have.

A (Continuing) Guaranty Trust Company in the

amount of $40,000.

THE COURT: You have to signal them in some way so they know which document it is.

MR. SIFFERT: We have shown them it with the number on it.

I offer this in evidence.

MR. DOYLE: No objection.

xx (Government's Exhibit 28G received in evidence.)

Q I show you Government's Exhibit 28F and ask you if these are the securities that were pledged as collateral on 12-15, the Pioneer stock?

A Yes.

Q However, although the receipt indicates that Acme was also pledged, the Acme stock is not attached? Is that correct?

A Correct.

MR. SIFFERT: I offer these in evidence.

xx (Government's Exhibit 28F received in evidence.)

MR. SIFFERT: Your Honor, these three documents I wish to offer. I received them last night. I have not had time to show them to counsel. I will do that now.

Q I show you Government's Exhibits 28H, 28J and 28I and ask if these were received by you, by your bank, in the ordinary course of business, and whether it

was the ordinary course of business to receive these documents.

A Yes.

MR. SIFFERT: I offer them all in evidence.

MR. DOYLE: No objection.

(Government's Exhibits 28H, 28J and 28I received in evidence.)

xx

MR. SIFFERT: May I read from these to the jury?

THE COURT: Yes.

(Mr. Siffert reads from 28J to the jury.)

THE COURT: Mr. Walker, don't you have all this arithmetic on a chart?

MR. WALKER: We are working on the chart.

THE COURT: There is no need to read this to the jury at this time.

MR. WALKER: We will make it clear to the jury in two charts in summation.

THE COURT: Let's not take the time to read to the jury now. They are in evidence. The chart will make all this clear.

MR. SIFFERT: These two documents do require some explanation.

Q I show you Government's Exhibit 28I. Will you explain to the jury what that is?

A That is making demand of the loan.

Q And was the loan ever paid?

A No.

Q I show you Government's Exhibit 28-H. It is a check to Guaranty Trust Company on January 2nd in the amount of $10,000, signed by Stuart Schiffman; on the upper left it says "Reduction" or "Reduc. of loan, Leonard Close." On the back there are two stamps.

Could you explain what those two stamps are?

A The two stamps, one on February 9th, 1970, it was returned for insufficient funds.

On March 17, 1970 it was returned again. It was reapplied and returned again for insufficient funds.

Q Subsequent to that did you make demand of the Central State Bank of Brooklyn, New York, for collection?

A We sent it for collection.

Q And is the second document attached to 28-H your return receipt of that demand?

A It was returned, yes, unpaid.

MR. SIFFERTN: No further questions.

CROSS EXAMINATION

XX BY MR. DOYLE:

Q Mr. Kelleher, my name is John Doyle and I represent Mr. Alan Segal, one of the defendants in this case, and I would like to show you two exhibits that were

marked Defendant's Exhibit I and J for identification and ask you if you can identify them.

First of all, do they relate to your bank, sir?

A Yes, they do.

Q And tell us what they are, what type of document they are?

A One is a check -- one is a debit, one is a credit.

Q And do they relate to a debit and a credit entry with respect to a check that was returned for insufficient funds?

A Correct.

Q And does it have to do with the account of Kelli, Jackson & Scott?

A Yes, it does.

Q And are those the documents that are sent out by the bank to the customer advising him of the debit and the credit?

A Yes.

Q And are those documents prepared by the bank in the regular course of its business?

A Yes, they are.

Q And is it the regular course of the business to prepare these documents --

MR. SIFFERT: No objection to competency, your Honor.

MR. DOYLE: Your Honor, I offer them in evidence.

THE COURT: Received.

(Defendant Segal's Exhibits I and J were received in evidence.)

xx MR. DOYLE: No further questions.

MR. SIFFERT: I have a question if there is no further cross.

THE COURT: Any other cross?

MR. NEWMAN: I have some.

CROSS EXAMINATION

BY MR. NEWMAN:

Q Mr. Kelliher, do you at this time or any time after that personally know Mr. Segal, Mr. Schiffman or Mr. Close?

A No.

Q Is there anything in the records that you have seen today or at any other time to show that these people or the Kelli, Jackson Company ever did any business with your bank before this loan?

MR. SIFFERT: Objection.

THE COURT: Overruled.

A Pardon me, could you repeat the question?

THE COURT: Do you know whether they were regular customers of the bank or had they been customers before?

Is that your question?

MR. NEWMAN: Yes, exactly, your Honor.

A No, I don't know.

Q You have no record, no recollection at all?

A According to my records, no, prior to this.

MR. NEWMAN: Thank you.

REDIRECT EXAMINATION

XX BY MR. SIFFERT:

Q In reference to the last question, was this one of the largest losses that the bank has ever suffered?

MR. DOYLE: Objection, your Honor.

THE COURT: Sustained.

MR. SIFFERT: Is that as to form, your Honor?

THE COURT: That is materiality, inter alia.

Q I show you Defendant Segal's Exhibit I and ask whether you can tell from this document whether the check was returned on a prior occasion?

A This appears like a bank check.

MR. DOYLE: Can't hear you, Mr. Kelliher.

A This appears like a bank check that was credited

to the account.

Q So you cannot tell from this whether or not the check had been previously presented and returned for insufficient funds?

A No, I can't tell by that.

Q And can you tell how many banks that this check may have passed through?

A Yes, one.

Q The check that was returned for insufficient funds, can you tell how many banks that passed through?

A This check? The one that was returned for insufficient funds?

THE COURT: What exhibit are you referring to?

MR. SIFFERT: This is Defendant Segal's Exhibit I.

A This was returned internally through the bank for insufficient funds.

Q This is not the check that was presented to the bank, in other words?

A No. That was a credit --

MR. DOYLE: He has already explained exactly what it is.

THE COURT: It is already in evidence. This would have been proper on a voir dire to exclude it from evidence, perhaps. It is already in.

Do you have some motion with respect to it?

MR. SIFFERT: I move to exclude this from evidence, your Honor. It is not material.

MR. DOYLE: Your Honor, this is the --

MR. WALKER: Could we see your Honor at side bar?

THE COURT: Here is the witness. Let's establish what it is. You offered it.

MR. DOYLE: I did offer it, your Honor.

THE COURT: It was received. I take it he wants to strike it.

MR. DOYLE: Let me ask the witness a question or two.

BY MR. DOYLE:

Q Mr. Kelliher, isn't it the practice of the bank to issue to the customer a debit advice on the same day that the bank returns the check for insufficient funds?

A Yes.

Q So the date on this debit advice would reflect the same date that your bank returned the check for insufficient funds back to the presenting bank?

A Right.

MR. DOYLE: Thank you.

MR. SIFFERT: What was the question and answer? I didn't hear the question.

THE COURT: Motio n denied.

MR. DOYLE: Thank you, your Honor.

BY MR. SIFFERT:

Q Do you know from this document how many times the check that was returned --

MR. DOYLE: Repetitious, your Honor.

THE COURT: Sustained.

MR. SIFFERT: No further questions.

THE COURT: You're excused.

(Witness excused.)

THE COURT: Next witness.

MR. SIFFERT: Dennis Colligan.

THE COURT: I want to just take this chance to tell the jury that we will not have a session this afternoon. We will have the single session this morning till 1.30, if that will suit all of you, and then we will take the afternoon off and let you do some of your own affairs. I know you have been tied up here pretty tight.

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D E N N I S C O L L I G A N , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIFFERT:

Q Mr. Colligan, how are you employed?

A I am employed by First National Bank of Nevada.

Q In what capacity?

A I am an operations officer.

Q For how long have you been so employed?

A Three and one-half years.

Q I show you Government's Exhibits 32-A and 32-B for identification and ask if those are business records of the bank?

THE COURT: Any objection?

MR. PAPE: Your Honor, we will stipulate as to competency on these records and reserve as to relevancy.

THE COURT: All right. Offer them.

Do you have some other objections? This is the time to make them.

MR. PAPE: As to relevancy on one of the documents, your Honor.

THE COURT: Which one?

MR. SIFFERT: 32-A, I think.

THE COURT: Let me see it.

MR. SIFFERT: I think that is the one.

THE COURT: 32-A, I see no Objection on that ground. Overruled.

MR. PAPE: That was not the document I was objecting to, your Honor.

THE COURT: I enjoyed reading it.

May I see the one counsel is objecting to?

MR. SIFFERT: I am not offering that, your Honor.

THE COURT: I see. It was fun.

Let's go.

(Government's Exhibits 32-A and B received in evidence.)

xx MR. SIFFERT: I have no further questions of this witness, your Honor.

THE COURT: You are excused.

I'm sorry --

MR. PAPE: I would like to keep him subject to recall.

THE COURT: All right, subject to recall.

(Witness excused.)

THE COURT: Next witness.

MR. SIFFERT: The Government calls Mr. Tobias.

THE CLERK: He is not here, Mr. Walker.

MR. SIFFERT: Mr. Tobias, Industrial Bank?

MR. WALKER: Excuse me, let me just check to make sure.

MR. SIFFERT: I'm sorry for the delay, your Honor. He was here this morning. I saw him go into the witness room.

MR. WALKER: He stepped out of the witness room, he is coming back up to the floor.

THE COURT: Can't we take somebody else?

MR. WALKER: Yes, your Honor, Mr. Berman.

THE COURT: Tell your witnesses to stay in the witness room.

- -

A B N E R B E R M A N , called as a witness by the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Berman, sir, how are you employed at the present time?

A I am the employer of Ber-Lee Fabrics.

Q How were you employed, sir, in October of 1969?

A I was the owner of Renba Fabrics.

Q Now, sir, did there come a time when you made a purchase of Pioneer Development Corporation stock?

A Yes, sir.

Q Was that on or about October 30, 1969?

A Yes, sir.

Q What led you to purchase this stock?

A I had an employee, a salesman, working for me by the name of Eddie Levine and this gentleman --

Q Did you have a conversation with him?

A Yes, sir.

Q And where was that conversation?

A In my office at 65 West 36th Street.

Q Was anyone else present?

A No, I don't recall.

Q Would you tell us, sir, what Mr. Eddie Levine said to you and what you said to him?

A Well, he told me that his father and some other gentleman were in on some stock deals and that this stock will earn over $2 a share on dividends within a few weeks.

MR. DOYLE: Excuse me, cculd he speak a little bit louder, sir? I didn't hear the last phrase.

MR. WALKER: May the reporter read the last question and answer, please?

THE COURT: Yes.

(Question and answer read.)

Q What else was said by Mr. Levine on that occasion?

A Told me that his family were buying it, his sister, brother, girl friend were buying it, and I asked him who was buying it in the market, and he told me that somebody, a gentleman by the name of Sol Fingar, who I knew very well in the dress business, bought this stock and I --

Q Was anything said, sir, on that conversation concerning what the company did?

A He told me that, the way I understood, it was in mobile homes; they were building mobile homes.

Q Do you recall anything further that was said at that time?

A Well, one thing I can recall, he told me that besides Sol Fingar, who's the owner of Durado Dress Company, he told me that Sol had some buyers bought this stock, too, and I felt that if he bought it and these others bought it, that the stock was worthwhile buying.

Q Now, sir, what did you do following that con - versation?

A Well, I called up my broker and bought a thousand shares of stock at that time.

Q Who is your broker?

A Hirsch & Company at that time.

Q Do you recall the price you paid for the thousand shares and the date on which you made the purchase?

A It was around the end of October, that time.

Q I show you this document and ask you if this refreshes your recollection?

A Yes. I bought the stock around November -- October 30, at 6-1/4.

Q And then, sir, what did you do following that?

MR. GREENBERG: What was the price?

THE WITNESS: 6-1/4.

MR. GREENBERG: Thank you.

A What was your question?

Q My next question, sir, is what happened after that as far as your investment?

A I waited a few days later, after buying the stock, the stock jumped to $9, and I was very happy about it, and I waited another few days, and the stock started going lower. When it got down to about 7-1/4, I decided to sell the stock.

Q And on November 3rd did you sell 9000 at 7-1/4 and 1000 at 7-1/2?

A That's right.

Q Now, sir, what happened following that?

A The following week, Eddie came into my office and he said --

MR. DOYLE: Who came into your office?

THE WITNESS: Eddie Levine came into my office and he said, "I heard you sold the stock," and I said, "Yes."

He said, "I'm very, very foolish because the stock is going to go up tremendously."

I called up my broker. I asked him the price of the stock and he said it was $9. It went back to $9.

I then bought another thousand shares at $9.

Q And, sir, was that purchase on roughly November 10th, 1969?

A That's right.

Q And thereafter, sir, did you make further purchases?

A The stock started going lower and lower, and around the 2nd of January I bought 500 shares again at 6-1/2 to equalize my stock.

Q And did you make a later purchase?

A The same stock going lower again, and then on January 23rd I bought 500 more at $4 a share, and that was the end of my buying the stock.

Q Sir, is it fair to say that your purchase prices of the last three amounts of stock were $9000 plus commission, $3317.50 and $2055?

A Yes, sir.

Q Now, sir, did you speak to Bob Meyer, Robert Meyer about this stock?

A Yes, sir.

Q And at what point in the purchases that you have described did you speak to Mr. Meyer?

A Well, the following day, after I bought the stock --

Q Which purchase, sir, the first one?

A The first purchase -- Bob Meyer --

MR. WINOGRAD: Objection.

MR. WALKER: Your Honor, I believe this is --

THE COURT: Don't tell us what Mr. Meyer said.

MR. WALKER: Your Honor, I believe it is admissible and relevant, not for the truth of the contents, but to show the pattern of purchases that was instituted here, and that statements by Mr. Meyer are admissible.

THE COURT: No.

MR. WALKER: Very well.

Q What did you say to Mr. Meyer --

MR. WINOGRAD: Objection.

THE COURT: Overruled.

Q Do you recall what you said to Mr. Meyer?

A Yes, sir.

Q As a result of what he told you --

MR. DOYLE: As a result of what who told him?

Q As a result of what Mr. Meyer said, what did you say?

MR. WINOGRAD: Objection, your Honor.

THE COURT: Sustained.

MR. WALKER: Is that as to form?

THE COURT: Hearsay.

MR. WALKER: I'm asking what this witness said.

THE COURT: As the result of what Mr. Meyer said, thereby incorporating the hearsay.

Q Sir, were all of your purchases made at the firm

of Hirsch & Company?

A Yes, sir.

Q And in respect of every one of the purchases that you made, did you receive a confirmation in the mail here in New York?

A Yes, sir.

Q Now, as to the 2000 shares which you have testified you purchased on November 10th, January 2nd and January 23rd, have you sold that stock?

A No, sir.

Q Why not?

A Because it was worthless.

Q Now, do you still hold the shares of Pioneer?

A Yes, sir.

Q At any time, sir, were you able to see or read any prospectus or financial statement or SEC filing in connection with this stock?

A No, sir.

MR. WALKER: I have no further questions of this witness.

CROSS EXAMINATION

XX BY MR. WINOGRAD:

Q Mr. Berman, what is the name of the firm that you are associated with today?